

**VIRTUAL REGULAR MEETING OF WILMINGTON CITY COUNCIL
SEPTEMBER 17, 2020 @ 6:30 P.M.**

AGENDA

- I. Call to Order**
 - Prayer**
 - Pledge of Allegiance**
 - Roll Call**
- II. Approval of Minutes**
- III. Committee Reports**
- IV. Acceptance of Treasurer's Report**
- V. Non-Legislative Business**

Shabazz	Recognize Dorothy Taylor Thompson 80 th Birthday
Shabazz	Recognize Wilmington Early Care & Education Council Annual Provider Appreciation
Oliver	Sympathy Debra Annette Robinson
Turner	Sympathy Gary Gwynn

VI. Legislative Business

OLIVER

#4844 Ord. 20-036 Rezone the Parcels of Land Located at (i) 1914, 1920, 2004, and 2006 Market Street; (ii) 50 Race Street; and (iii) 1901, 1903, 1905, 1907, 1915, 1925, 1927, and 1929 Hutton Street from C-1 (Neighborhood Shopping) Zoning Classification to C-2 (Secondary Business Centers) Zoning Classification **(Public Hearing - 3rd & Final Reading)**

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance rezones the parcels of land located at (i) 1914, 1920, 2004, and 2006 Market Street; (ii) 50 Race Street; and (iii) 1901, 1903, 1905, 1907, 1915, 1925, 1927, and 1929 Hutton Street from C-1 (Neighborhood Shopping) Zoning Classification to C-2 (Secondary Business Centers) Zoning Classification.*

HARLEE

#4857 An Ordinance to Rezone Sixteen Parcels of Land Located Within the Area Generally Bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's Southern Boundary from W-2 (Waterfront Manufacturing/Commercial) Zoning Classification to W-4 (Waterfront Residential/Commercial) Zoning Classification **(1st & 2nd Reading)**

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance rezones sixteen parcels of land (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; 26-056.00-016, respectively) located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's Southern Boundary from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial).*

#4858 A Resolution Scheduling a Public Hearing on the Ordinance to Rezone Sixteen Parcels of Land Located Within the Area Generally Bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's Southern Boundary from W-2 (Waterfront Manufacturing/Commercial) Zoning Classification to W-4 (Waterfront Residential/Commercial) Zoning Classification

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution schedules a public hearing on November 19, 2020 at 6:30 p.m. regarding the proposed rezoning of sixteen parcels of land (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; 26-056.00-016, respectively) located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's Southern Boundary from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial). Due to the outbreak of the COVID-19 virus, this public hearing will be conducted virtually to maintain social distancing and to keep all constituents safe. The instructions to access the public hearing will be included on the agenda for the November 19, 2020 Council meeting.*

MCCOY

#4847 Ord. 20-037 Rezone the Parcels of Land Located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Beech Street from M-2 (General Industrial) Zoning Classification to C-2 (Secondary Business Centers) Zoning Classification (**Public Hearing - 3rd & Final Reading**)

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance rezones the parcels of land located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Beech Street in Wilmington, Delaware from a zoning classification of M-2 (General Industrial) to a zoning classification of C-2 (Secondary Business Centers).*

- #4849 Ord. 20-038 Approve the Removal of a Portion of Anchorage Street, Between Lower Oak and Beech Streets, from the Official City Map (**3rd & Final Reading**)

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the removal of a portion of Anchorage Street, between Lower Oak and Beech Streets, from the Official City Map.*

FREEL

- #4853 Ord. 20-041 Authorize and Approve a Contract Between the City of Wilmington and Teladoc Health, Inc. for Telehealth Services (**3rd & Final Reading**)

Synopsis: *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the execution of an agreement (the "Agreement") with Teladoc Health, Inc. ("Teladoc") to purchase telehealth services for City employees and their dependents. The Agreement is for a period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year.*

- #4859 A Resolution to Approve the License Agreement Authorizing New Cingular Wireless PCS, LLC to Install and Operate Wireless Telecommunication Facilities in the Public Rights of Way of the City of Wilmington

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution approves the License Agreement ("the License") between the City and New Cingular Wireless PCS, LLC ("New Cingular") to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington. This equipment is part of New Cingular's network for the operation of wireless communications services. The initial term of the License is ten (10) years commencing on September 17, 2020 and shall continue thereafter until terminated by either party.*

- #4860 A Resolution to Authorize and Approve a License Agreement Between the City of Wilmington and Holland Mulch Inc. Regarding the Use of a Portion of 475 Hay Road for the Storage of Yard Waste and the Conversion of Yard Waste into Mulch

Synopsis: *This Resolution is being presented by the Administration for Council's review and approval. This Resolution approves a five-year license agreement with five one-year renewal options between the City and Holland Mulch Inc. ("Holland"), which permits Holland to use of a portion of 475 Hay Road, Wilmington, Delaware (being Tax Parcel ID 26-046.00-001) to store yard waste and convert it*

into mulch. In return, Holland will accept and dispose of all of the City's yard waste at its sole cost and expense, a service which has a monetary value of approximately one hundred twelve thousand, five hundred dollars (\$112,500.00) per year.

FREEL

#4861

An Ordinance Authorizing the Issuance of the City's General Obligation Bonds and/or General Obligation Bond Anticipation Notes, in One or More Series on a Tax-Exempt and/or Taxable Basis, In Order to Provide the Funds to Finance Various Capital Projects of the City; Providing for the Sale of the Bonds; and Authorizing Other Necessary Action **(1st & 2nd Reading)**

Synopsis:

This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the issuance of up to \$41,000,000 aggregate principal amount of General Obligation Bonds (the "Bonds"), and/or General Obligation Bond Anticipation Notes (the "BAN") in anticipation thereof, in order to: (i) finance any duly authorized capital project of the City specified in the City's capital budgets for its Fiscal Years ending June 30, 2018 and June 30, 2020; and (ii) pay the costs associated with the issuance of the Bonds and the BAN.

VII. Petitions and Communications**VIII. Adjournment**

Note: In following Governor Carney's Proclamation #17-3292, due to the outbreak of the COVID-19, public meetings are currently being conducted virtually to maintain social distancing and to keep all constituents safe. Members of the public are invited to join the City Council meeting by accessing the meeting as follows:

<https://zoom.us/j/92382528106> or visit the WITN22 website at www.witn22.org or WITN YouTube channel at <https://www.youtube.com/user/WITN22Wilmington/> or listen in only by calling one of the following phone numbers (929) 205-6099 or (301) 715-8592. You will be asked for the Webinar ID. Please enter **Webinar ID: 923 8252 8106** and then #.

www.wilmingtoncitycouncil.com or www.WITN22.org

AN ORDINANCE TO REZONE THE PARCELS OF LAND LOCATED AT (I) 1914, 1920, 2004, AND 2006 NORTH MARKET STREET; (II) 50 RACE STREET; AND (III) 1901, 1903, 1905, 1907, 1915, 1925, 1927, AND 1929 HUTTON STREET FROM C-1 (NEIGHBORHOOD SHOPPING) ZONING CLASSIFICATION TO C-2 (SECONDARY BUSINESS CENTERS) ZONING CLASSIFICATION

#4844

Sponsor:

**Council
Member
Oliver**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, in accordance with and pursuant to Section 48-52 of the City Code, the City Planning Commission held a duly advertised public hearing at its July 21, 2020 meeting and adopted Planning Commission Resolution 15-20, which recommended approval of the rezoning of the parcels of land located at (i) 1914, 1920, 2004, and 2006 North Market Street, Wilmington Delaware (being Tax Parcel Nos. 26-029.10-017, 26-029.10-016, 26-029.10-013, and 26-029.10-012, respectively); (ii) 50 Race Street, Wilmington, Delaware (being Tax Parcel No. 26-029.10-030); and (iii) 1901, 1903, 1905, 1907, 1915, 1925, 1927, and 1929 Hutton Street, Wilmington, Delaware (being Tax Parcel Nos. 26-029.10-031, 26-029.10-032, 26-029.10-033, 26-029.10-034, 26-029.10-035, 26-029.10-036, 26-029.10-037, and 26-029.10-038, respectively) (collectively, the “Parcels”) from a zoning classification of C-1 (Neighborhood Shopping) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”; and

WHEREAS, City Council deems it necessary and appropriate to rezone the Parcels from a zoning classification of C-1 (Neighborhood Shopping) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Section 48-97 of the Wilmington City Code and the “Building Zone Map of Wilmington, Delaware”, dated January 19, 2006 (as subsequently amended), are

hereby amended by changing the zoning classification of the parcels of land located at (i) 1914, 1920, 2004, and 2006 North Market Street, Wilmington Delaware (being Tax Parcel ID Nos. 26-029.10-017, 26-029.10-016, 26-029.10-013, and 26-029.10-012, respectively); (ii) 50 Race Street, Wilmington, Delaware (being Tax Parcel ID No. 26-029.10-030); and (iii) 1901, 1903, 1905, 1907, 1915, 1925, 1927, and 1929 Hutton Street, Wilmington, Delaware (being Tax Parcel ID Nos. 26-029.10-031, 26-029.10-032, 26-029.10-033, 26-029.10-034, 26-029.10-035, 26-029.10-036, 26-029.10-037, and 26-029.10-038, respectively) from a zoning classification of C-1 (Neighborhood Shopping) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit "A".

SECTION 2. The rezoning of the Parcels described herein and identified in Exhibit "A" attached hereto and made a part hereof is consistent with the recommendations of the Citywide comprehensive plan entitled "Wilmington 2028: A Comprehensive Plan for Our City and Communities".

SECTION 3. This Ordinance shall be deemed effective immediately upon its date of passage by City Council and approval by the Mayor.

First Reading.....August 20, 2020
Second Reading.....August 20, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

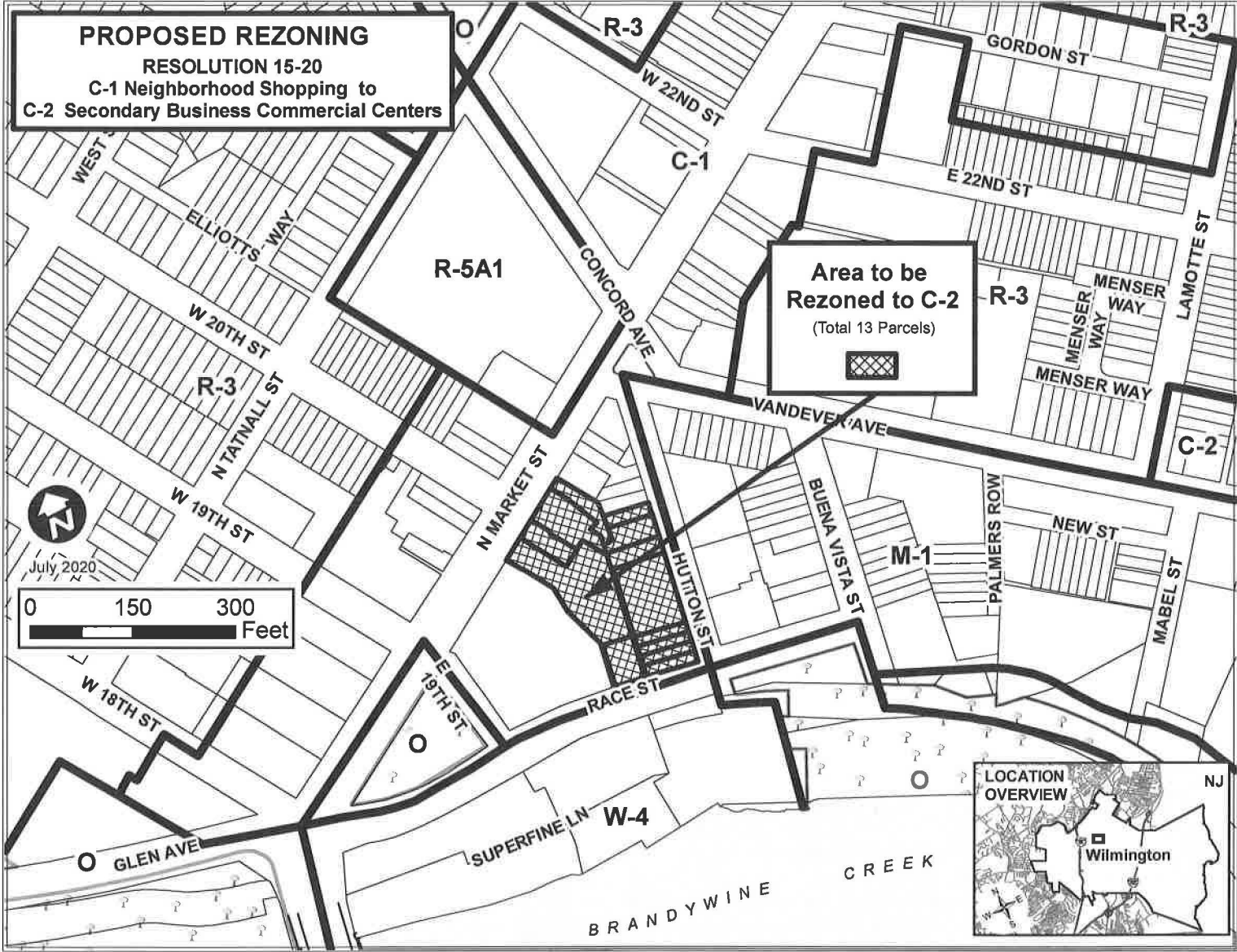
Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance rezones the parcels of land located at (i) 1914, 1920, 2004, and 2006 North Market Street, Wilmington Delaware (being Tax Parcel Nos. 26-029.10-017, 26-029.10-016, 26-029.10-013, and 26-029.10-012, respectively); (ii) 50 Race Street, Wilmington, Delaware (being Tax Parcel No. 26-029.10-030); and (iii) 1901, 1903, 1905, 1907, 1915, 1925, 1927, and 1929 Hutton Street, Wilmington, Delaware (being Tax Parcel Nos. 26-029.10-031, 26-029.10-032, 26-029.10-033, 26-029.10-034, 26-029.10-035, 26-029.10-036, 26-029.10-037, 26-029.10-038, respectively) from a zoning classification of C-1 (Neighborhood Shopping) to a zoning classification of C-2 (Secondary Business Centers).

W0111504

EXHIBIT A



**AN ORDINANCE TO REZONE SIXTEEN PARCELS OF LAND LOCATED
WITHIN THE AREA GENERALLY BOUNDED BY MADISON AND
JUSTISON STREETS, THE AMTRAK RAILROAD CORRIDOR, I-95, AND
THE CITY’S SOUTHERN BOUNDARY FROM W-2 (WATERFRONT
MANUFACTURING/COMMERCIAL) ZONING CLASSIFICATION TO W-4
(WATERFRONT RESIDENTIAL/COMMERCIAL) ZONING
CLASSIFICATION**

#4857

Sponsor:

**Council
Member
Harlee**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, in accordance with and pursuant to Section 48-52 of the City Code, the City Planning Commission held a duly advertised public hearing at its October 20, 2020 meeting and adopted Planning Commission Resolution 18-20, which recommended approval of the rezoning of sixteen parcels of land located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City’s southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) (collectively, the “Parcels”), from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”; and

WHEREAS, City Council deems it necessary and appropriate to rezone the Parcels from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Section 48-97 of the Wilmington City Code and the “Building Zone

Map of Wilmington, Delaware”, dated January 19, 2006 (as subsequently amended), are hereby amended by changing the zoning classification of sixteen parcels of land located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City’s southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”.

SECTION 2. The rezoning of the Parcels described herein and identified in Exhibit “A” attached hereto and made a part hereof is consistent with the recommendations of the Citywide comprehensive plan entitled “Wilmington 2028: A Comprehensive Plan for Our City and Communities”.

SECTION 3. This Ordinance shall be deemed effective immediately upon its date of passage by City Council and approval by the Mayor.

First Reading.....September 17, 2020
Second Reading.....September 17, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance rezones sixteen parcels of land located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial).

W0111765

EXHIBIT A

CPC RESOLUTION 18-20

A Proposal to Rezone the Area
generally bounded by Madison and
Justison Streets, Amtrak Railroad Corridor,
I-95 and the City's southern boundary
from W-2 waterfront commercial/manufacturing
to W-4 waterfront residential/commercial

W-4

RIVERWALK

HARLAN BLVD

604200023

HOLLINGSWORTH AVE

Delaware Children's Museum

RIVER WALK

2604500036

ON ST

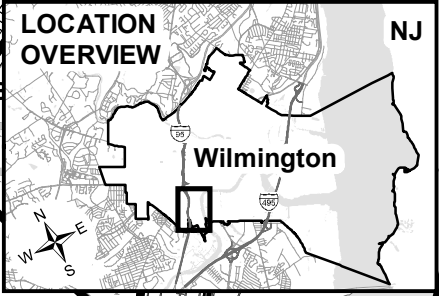
W-4

Area to be Rezoned to W-4

: : :	Total of 16 Parcels
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260-42.0-0003
260-42.0-0005
260-42.0-0023
260-49.0-0002
260-49.0-0016
260-49.0-0018
260-49.0-0019
260-49.0-0020
260-49.0-0021
260-49.0-0022
260-49.0-0032
260-49.0-0036
260-49.0-0037
260-49.0-0040
260-56.0-0010
260-56.0-0016

260-42.0-0003
260-42.0-0005
260-42.0-0023
260-49.0-0002
260-49.0-0016
260-49.0-0018
260-49.0-0019
260-49.0-0020
260-49.0-0021
260-49.0-0022
260-49.0-0032
260-49.0-0036
260-49.0-0037
260-49.0-0040
260-56.0-0010
260-56.0-0016



Wilmington, Delaware
September 17, 2020

#4858

Sponsor:

**Council
Member
Harlee**

WHEREAS, contemporaneous with this Resolution, an Ordinance will be introduced to the Wilmington City Council that will propose amendments to the City's Official Building Zone Map relating to changing the zoning classification of sixteen parcels of land located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial); and

WHEREAS, the City Planning Commission will review the proposed rezoning at its October 20, 2020 regular meeting after holding a duly advertised public hearing; and

WHEREAS, City Council proposes to schedule a public hearing for review of the proposed rezoning Ordinance, or a Substitute thereto, to be duly advertised in conformity with Wilmington City Code Section 48-51, by publication in any newspaper of general circulation, at least once, not less than fifteen (15) days prior to the date of the public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that City Council hereby schedules a public hearing on said proposed rezoning Ordinance, or a Substitute thereto, to be held on November 19, 2020 at 6:30 p.m., to consider the proposal to rezone the land described in the proposed Ordinance, being sixteen parcels of land located within the area generally bounded by Madison and Justison Streets,

the Amtrak Railroad Corridor, I-95, and the City's southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial).

BE IT FURTHER RESOLVED that due to the outbreak of the COVID-19 virus, this public hearing will be conducted virtually to maintain social distancing and to keep all constituents safe. The instructions to access the public hearing will be included on the agenda for the November 19, 2020 Council meeting.

BE IT FURTHER RESOLVED that the President of City Council and the City Clerk are hereby directed to give public notice of said hearing in the manner and form required by the provisions of the Wilmington City Charter and City Code.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution schedules a public hearing on November 19, 2020 at 6:30 p.m. regarding the proposed rezoning of sixteen parcels of land located within the area generally bounded by Madison and Justison Streets, the Amtrak Railroad Corridor, I-95, and the City's southern boundary (being Tax Parcel Nos. 26-042.00-003; 26-042.00-005; 26-042.00-023; 26-049.00-002; 26-049.00-016; 26-049.00-018; 26-049.00-019; 26-049.00-020; 26-049.00-021; 26-049.00-022; 26-049.00-032; 26-049.00-036; 26-049.00-037; 26-049.00-040; 26-056.00-010; and 26-056.00-016, respectively) from a zoning classification of W-2 (Waterfront Manufacturing/Commercial) to a zoning classification of W-4 (Waterfront Residential/Commercial). Due to the outbreak of the COVID-19 virus, this public hearing will be conducted virtually to maintain social distancing and to keep all constituents safe. The instructions to access the public hearing will be included on the agenda for the November 19, 2020 Council meeting.

W0111771

AN ORDINANCE TO REZONE THE PARCELS OF LAND LOCATED AT 700 MARYLAND AVENUE, 101 LOWER OAK STREET, AND 120 LOWER BEECH STREET FROM M-2 (GENERAL INDUSTRIAL) ZONING CLASSIFICATION TO C-2 (SECONDARY BUSINESS CENTERS) ZONING CLASSIFICATION

#4847

Sponsor:

**Council
Member
McCoy**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, in accordance with and pursuant to Section 48-52 of the City Code, the City Planning Commission held a duly advertised public hearing at its April 21, 2020 meeting and adopted Planning Commission Resolution 9-20, which recommended approval of the rezoning of the parcels of land located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Lower Beech Street, Wilmington, Delaware (being Tax Parcel Nos. 26-042.30-079, 26-042.30-309, and 26-042.30-308, respectively) (collectively, the “Parcels”), from a zoning classification of M-2 (General Industrial) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”; and

WHEREAS, City Council deems it necessary and appropriate to rezone the Parcels from a zoning classification of M-2 (General Industrial) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit “A”.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Section 48-97 of the Wilmington City Code and the “Building Zone Map of Wilmington, Delaware”, dated January 19, 2006 (as subsequently amended), are hereby amended by changing the zoning classification of the parcels of land located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Lower Beech Street, Wilmington, Delaware (being Tax Parcel Nos. 26-042.30-079, 26-042.30-309, and 26-042.30-308,

respectively) from a zoning classification of M-2 (General Industrial) to a zoning classification of C-2 (Secondary Business Centers), as illustrated on the map attached hereto and made a part hereof as Exhibit "A".

SECTION 2. The rezoning of the Parcels described herein and identified in Exhibit "A" attached hereto and made a part hereof is consistent with the recommendations of the Citywide comprehensive plan entitled "Wilmington 2028: A Comprehensive Plan for Our City and Communities".

SECTION 3. This Ordinance shall be deemed effective immediately upon its date of passage by City Council and approval by the Mayor.

First Reading.....August 20, 2020
Second Reading.....August 20, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance rezones the parcels of land located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Lower Beech Street, Wilmington, Delaware (being Tax Parcel Nos. 26-042.30-079, 26-042.30-309, and 26-042.30-308, respectively) from a zoning classification of M-2 (General Industrial) to a zoning classification of C-2 (Secondary Business Centers).

EXHIBIT A



AN ORDINANCE TO APPROVE THE REMOVAL OF A PORTION OF ANCHORAGE STREET, LOCATED BETWEEN LOWER OAK AND LOWER BEECH STREETS, FROM THE OFFICIAL CITY MAP

#4849

Sponsor:

**Council
Member
McCoy**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, the City of Wilmington is authorized to establish and revise plans of streets and alleys by the provisions of Sections 1-101, 2-306, and 5-400 of the City Charter, such actions to be done in accordance with applicable provisions of State law and Section 42-11 of the City Code; and

WHEREAS, Reybold Venture Group XI, LLC (the "Applicant"), the owner of the former National Vulcanized Fiber site located at 700 Maryland Avenue, 101 Lower Oak Street, and 120 Lower Beech Street, Wilmington, Delaware (collectively, the "Site"), would like to redevelop the Site into a residential complex, including renovating the vacant buildings for apartments, constructing a new apartment building along Maryland Avenue and Beech Street, and providing parking; and

WHEREAS, a portion of Anchorage Street, located between Lower Oak and Lower Beech Streets, bisects the Site (the "Street Bed"); and

WHEREAS, the Applicant has requested the removal of the Street Bed from the Official City Map, as more particularly illustrated on Exhibit "A" attached hereto, in order to provide open space for the Site; and

WHEREAS, the City has been able to determine that it owns the Street Bed; and

WHEREAS, the Department of Public Works has advised that: (1) the Street Bed is not currently necessary, nor would be reasonably anticipated to be necessary in the future, to provide for general vehicular traffic circulation and the safety of vehicular and pedestrian traffic in the area of the Street Bed; (2) there is an eight inch water main and a sixty-five inch brick sewer line located within the Street Bed and therefore thirty-foot wide easements respectively centered on such water main and sewer line will be required so that the City may

retain access to such water main and sewer line; and (3) the Division of Transportation takes no exception and supports the request to vacate the Street Bed, subject to the retention of the aforementioned easements by the City; and

WHEREAS, the Department of Planning has no objection to the removal of the Street Bed from the Official City Map because: (1) the Street Bed does not currently contribute to the general vehicular traffic circulation or distribution pattern in the immediate area; (2) the Street Bed is proposed to remain undeveloped and subjected to the required utility easements; (3) the Street Bed is not privately owned; and (4) there are no findings to suggest that the removal of the Street Bed would create a detriment to the general public or to public safety; and

WHEREAS, no comments or objections were received from the Fire Marshal's Office; and

WHEREAS, there are no findings to suggest that the removal of the Street Bed would create a detriment to the general public or to public safety; and

WHEREAS, the City Planning Commission has adopted Planning Commission Resolution 10-20, which recommended approval of the Applicant's request to remove the Street Bed from the Official City Map; and

WHEREAS, the City Council deems it necessary and appropriate to approve the removal of the Street Bed referenced in Exhibit "A" from the Official City Map.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The removal from the Official City Map of a portion of Anchorage Street located between Lower Oak and Lower Beech Streets, which is illustrated on Exhibit

“A” attached hereto, is hereby approved (subject to the conditions set forth in Section 2 of this Ordinance), and the Official City Map is hereby amended to reflect such removal.

SECTION 2. The City shall retain thirty-foot wide easements respectively centered on the eight inch water main and the sixty-five inch brick sewer line located within the portion of Anchorage Street that is being removed from the Official City Map, or such other easements as the Commissioner of Public Works shall determine are necessary.

SECTION 3. The conveyance of the portion of Anchorage Street that is being removed from the Official City Map to Reybold Venture Group XI, LLC, the owner of the abutting properties, is hereby authorized.

SECTION 4. All City departments are hereby authorized to take any and all necessary actions required for: (i) the proposed removal of the portion of Anchorage Street from the Official City Map; (ii) the proposed conveyance of the portion of Anchorage Street to Reybold Venture Group XI, LLC; and (iii) the proposed retention of the aforementioned easements for the City.

SECTION 5. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval by the Mayor.

First Reading.....August 20, 2020
Second Reading.....August 20, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the removal of a portion of Anchorage Street, located between Lower Oak and Lower Beech Streets, from the Official City Map.

W0111495

EXHIBIT A

A right triangle is shown with a horizontal base and a vertical height. The hypotenuse is labeled with a double-headed arrow and the text "50 ft.".

300 ft.

Lower Oak St

Anchorage St

Marshall St

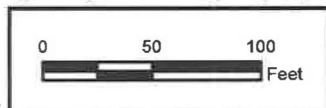
S Van Buren St

Columbia Ave

Maryland Ave



April 2020



LOCATION OVERVIEW

NJ

Wilmington



**AN ORDINANCE TO AUTHORIZE AND APPROVE A CONTRACT
BETWEEN THE CITY OF WILMINGTON AND TELADOC HEALTH, INC.
FOR TELEHEALTH SERVICES**

#4853

Sponsor:

**Council
Member
Freel**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to enter into an agreement (the "Agreement") with Teladoc Health, Inc. ("Teladoc") to purchase telehealth services for City employees and their dependents, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A"; and

WHEREAS, the term of the Agreement is for a period of three (3) years from October 1, 2020 through September 30, 2023, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year, with the possibility of three (3) extensions of one (1) year thereafter at the same estimated maximum annual price; and

WHEREAS, it is the recommendation of the Department of Human Resources that the City enter into the Agreement with Teladoc for a period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility of three (3) extensions of one (1) year thereafter.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Agreement between the City of Wilmington and Teladoc Health, Inc., a copy of which Agreement, in substantial form, is attached hereto as Exhibit "A," for the period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility

of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year, is hereby approved, and the Mayor or his designee is hereby authorized to execute as many copies of the Agreement, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... August 27, 2020
Second Reading..... August 27, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of an agreement (the "Agreement") with Teladoc Health, Inc. ("Teladoc") to purchase telehealth services for City employees and their dependents. The Agreement is for a period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period of three (3) years from October 1, 2020 through September 30, 2023, at a total estimated maximum price of Ninety-Six Thousand Dollars (\$96,000.00), with the possibility of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year.

EXHIBIT A

TELADOC HEALTH SERVICES AGREEMENT

This Teladoc Health Services Agreement ("**Agreement**") is entered into on **October 1, 2020** ("**Effective Date**"), by and between Teladoc Health, Inc. ("**Teladoc Health**") and City of Wilmington ("**Employer**"). Teladoc Health and Employer shall be referred to herein as the "**Parties**" and each individually as a "**Party**".

Introduction

A. Teladoc Health provides (i) a suite of telehealth services offered under the Teladoc® and HealthiestYou® brands, and (ii) a suite of expert medical information services offered under the Best Doctors® and Advance Medical® brands, as more fully described in the Exhibit(s) incorporated in this Agreement (collectively, the "**Services**").

B. Employer desires to purchase the Services for use by certain of its employees ("**Employees**") and their eligible dependents ("**Eligible Dependents**") as an additional benefit in connection with Employer's employee benefits program. "Eligible Dependent" means a "dependent," as defined under the Internal Revenue Code, I.R.C. § 152, or as may be mutually agreed between the Parties. Employees and Eligible Dependents are collectively and each referred to as "**Member(s)**".

Terms and Conditions

1. Scope.

This Agreement sets forth the terms and conditions under which Teladoc Health will provide the Services to Employer. Employer agrees to provide access to the Services to all Members and to inform the Members regarding the availability of the Services as provided in this Agreement. The specific Services that Employer has engaged Teladoc Health to provide, as well as the specific terms and conditions applicable to the provisions of those Services, are described in the attached Exhibit(s), which are incorporated by reference and made a part of this Agreement.

Capitalized terms used but not separately defined in the Exhibits shall have the meanings assigned to them in this Agreement. In the event of a conflict between terms set forth in this Agreement and the terms of an Exhibit or Attachment to the Agreement, the terms of the Exhibit or Attachment will govern.

2. Term and Termination; Survival. This Agreement commences on the Effective Date and will continue in force and will continue in force for an initial term that will end on the **third** anniversary of the Effective Date ("**Initial Term**") unless extended under the provisions of Exhibit 2, attached hereto, unless terminated earlier pursuant to **Section II(B)** of Exhibit 2, attached hereto, unless terminated earlier as outlined below; *provided, however*, that the provisions of Section 3 (*Intellectual Property Rights*), Section 5 (*Protected Health Information; Confidential Information*), and Section 7 (*Indemnification; Limitations of Liability*) shall survive any expiration or termination of the Agreement. Either Party may terminate this Agreement (a) for the other Party's material breach of the Agreement, which breach has not been cured, or cannot reasonably be cured, within 30 days after receipt of written notice by the non-breaching Party; or (b) for the other Party's Insolvency. For the purposes of this Agreement, "**Insolvency**" means that the other Party files or is subject to any voluntary or involuntary bankruptcy,

receivership, or assignment for the benefit of creditors or similar proceeding.

3. Intellectual Property Rights.

3.1 Employer acknowledges that all materials relating to the Services that are developed by or on behalf of Teladoc Health or provided to the Employer by Teladoc Health (including, without limitation, any Communication and/or Member Engagement materials referred to in the attached Exhibit(s)), and all trade names, service marks, trademarks and logos that are used by Teladoc Health, and such other trade names, trademarks and logos as hereinafter may be designated by Teladoc Health in connection with its business (the "**Teladoc Health Marks**") are the unique intellectual property of Teladoc Health (the "**Intellectual Property**"), and the Employer agrees that: (i) the Employer will not duplicate the Services in any format that would, in whole or in part, infringe upon the intellectual property rights of Teladoc Health, and will not use or disclose the Intellectual Property in any manner other than pursuant to this Agreement; (ii) the Employer and its employees, directors, officers, agents, owners, successors and assigns shall maintain the confidentiality of any non-public Intellectual Property disclosed to the Employer by Teladoc Health; and (iii) on termination of this Agreement, the Employer shall return to Teladoc Health all of the Intellectual Property provided to the Employer upon request.

3.2 Pursuant to the terms of this Agreement and only in a manner that has been approved by Teladoc Health in advance, Teladoc Health grants Employer a limited, non-exclusive, non-transferable license to use the Teladoc Health Marks during the term of this Agreement.

4. No Joint Undertaking. Teladoc Health and Employer are and shall at all times function as independent contractors under this Agreement, and neither Teladoc Health nor

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Employer is authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name of the other Party, except to the extent otherwise specifically contemplated herein. The employees, agents, representatives, providers, methods, facilities and equipment of a Party shall at all times be under the exclusive direction and control of that Party.

5. Protected Health Information; Confidential Information.

5.1 To the extent that Employer offers any Services as part of its Group Health Plan, as defined by 45 C.F.R. § 160.103, the receipt, creation, use, and/or disclosure of Protected Health Information by Teladoc Health on Employer's behalf will be governed, as applicable, by the Business Associate Agreement attached to this Agreement as **Exhibit 1**.

****MUST BE COMPLETED by Employer:** By choosing the appropriate box below, Employer confirms one of the following statements:

☒ Services being provided under this Agreement are being incorporated as part of Employer's Group Health Plan, as defined by 45 C.F.R. § 160.103

OR

☐ Services being provided under this Agreement are not being incorporated as part of Employer's Group Health Plan, as defined by 45 C.F.R. § 160.103

5.2 For purposes of this Agreement, "**Disclosing Party**" shall mean the Party that discloses any Confidential Information, as defined below, to the other Party to this Agreement, and the "**Receiving Party**" shall mean the Party that receives any Confidential Information, as defined below, from the other Party to this Agreement.

(a) For purposes of this Agreement, "**Confidential Information**" shall include information: (i) that is not known by actual or potential competitors of the Disclosing Party or is generally unavailable to the public; (ii) that has been created, discovered or developed by, or otherwise become known to, the Disclosing Party or in which property rights have been assigned or otherwise conveyed to the Disclosing Party; and (iii) that has material economic value or potential material economic value to the Disclosing Party's present or future business. Confidential Information shall include trade secrets which include all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, technical data (whether or not patentable or registerable under patent, copyright or similar statutes, and including all rights to obtain, register, perfect, and enforce those proprietary interests) and any other Intellectual Property, customer and supplier lists, price lists,

business plans, and any modifications or enhancements of any of the foregoing, and all program, marketing, sales, or other financial or business information disclosed to the Receiving Party by the Disclosing Party, either directly or indirectly, in writing or orally or by drawings or observation, which has actual or potential economic value to the Disclosing Party, any other information that is treated as confidential, regardless of whether it is marked as such, and any other information that a reasonable party would conclude is confidential or proprietary in nature. Confidential Information shall also include, without limitation, employee information not otherwise defined as Protected Health Information by 45 C.F.R. § 160.103, analyses, forecasts, studies, summaries, marketing plans, financial data, business statistics, property, contracts, methods, transactions, affairs, concepts, ideas, services, products, images, graphics, text, audio, video, software and other data, knowledge, content or information in written, oral, visual and/or physical/sample form.

- (b) Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the Receiving Party; (ii) is disclosed to third parties by the Disclosing Party without restriction on such third parties; (iii) is in the Receiving Party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement; (iv) is disclosed to the Receiving Party by a third party having no obligation of confidentiality with respect thereto; (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or (vi) is released from confidential treatment by written consent of the Disclosing Party.
- (c) Notwithstanding the foregoing, portions of Confidential Information may be disclosed pursuant to the request of a governmental agency or third party if such disclosure is required by operation of law, regulation or court order, provided the Receiving Party gives the Disclosing Party prompt written notice of such proposed disclosure in order to enable the Disclosing Party to obtain an appropriate protective order, if it so desires. If a deadline exists for the disclosure pursuant to a freedom of information/sunshine law, the Receiving Party may disclose the Confidential Information in accordance with the deadline regardless of any action taken by the Disclosing Party.
- (d) The Receiving Party shall hold and maintain the Confidential Information of the Disclosing Party in strictest confidence and in trust for the sole and

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exclusive benefit of the Disclosing Party. The Receiving Party shall not, without the prior written approval of the Disclosing Party, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information of the Disclosing Party.

- (e) The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information of the Disclosing Party in violation of this Agreement may cause the Disclosing Party irreparable harm, and that monetary damages may not be a sufficient remedy. Thus, the Receiving Party agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate, and the Receiving Party expressly agrees that the Disclosing Party shall be entitled, in addition to any other remedy provided by law, to seek an injunction or other equitable remedy respecting such violation or continued violation. Such right is to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity. If any action at law or in equity is brought to enforce or interpret the provisions of this Section, the prevailing Party in such action shall be entitled to reasonable attorneys' fees.
- (f) Upon request, the Receiving Party shall promptly return to the Disclosing Party any and all records, notes and other written, printed or tangible materials pertaining to the Confidential Information of the Disclosing Party.

6. Representations of the Parties; Disclaimer.

6.1 Each Party represents that (a) it has the necessary and actual right and authority to enter into and to perform its obligations under this Agreement, (b) it has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement, (c) this Agreement constitutes a valid and binding obligation enforceable against the Party in accordance with its terms, and (d) it will perform its obligations under this Agreement in a manner that complies with all laws applicable to such Party.

6.2 Employer represents that (a) Employer has sought its own legal advice with respect to the use of the Services as part of a wellness program, if applicable; and (b) that Teladoc Health has not provided Employer with advice regarding the legality of any of its wellness programs or use of the Services for such wellness programs.

6.3 Each Party represents that it will maintain such insurance coverage as is reasonably necessary to support its respective obligations under this Agreement.

Notwithstanding the foregoing, Teladoc Health acknowledges that the Employer may meet its aforementioned obligations by self-insurance.

Specifically, Teladoc Health represents that during the Term, it will maintain the following minimum types and amounts of insurance in the provision of the Services, with carriers having an AM Best Rating of A- or better:

- (a) Workers Compensation Insurance in the amount required by law;
- (b) Professional Liability/MCO Errors and Omissions coverage of \$10 million per occurrence/aggregate;
- (c) General Liability coverage of \$1 million per occurrence/\$2 million aggregate;
- (d) Technology Errors and Omissions and Cyber Risk Liability coverage (including network security and privacy liability) of \$10 million; and
- (e) With respect to telehealth services, Teladoc Health will ensure that each Physician is provided with the requisite medical malpractice insurance coverage, in all cases complying with the minimum requirements of the applicable jurisdiction.

Upon request, Teladoc Health will provide Employer with a certificate evidencing the above insurance coverage and naming the Employer as an additional insured with respect to the general liability coverage.

6.4 Employer acknowledges and agrees that except as may be explicitly set forth in this Agreement, Teladoc Health has made no representations, and has expressly disclaimed to the maximum extent permitted by law, all warranties or representations of every kind or nature, either implied or statutory, as to the Services, including without limitation, any implied warranties of merchantability, fitness for a particular purpose, or title.

7. Indemnification; Limitations of Liability.

7.1 Each Party agrees that it is solely liable for any breach, misrepresentation, error or omission by its employees, agents and representatives concerning the Services or otherwise made by such Party in fulfilling its obligations under this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party and its affiliates, and their directors, officers, employees, agents, representatives, successors and assigns, from and against any loss, cost, damage or expense, including reasonable attorneys' fees and court costs, arising out of any error, omission or malfeasance of such breaching Party.

7.2 Each Party's total liability (including the liability of any of its officers, employees, or agents) relating to claims for damages arising from or relating to the performance of this Agreement shall be limited to direct (reasonably foreseeable) damages and shall in no event exceed twice

Teladoc

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the amount of Fees paid by Employer during the Term; provided, however, that:

- (a) Teladoc Health's total obligation for any claim arising from (i) a breach of the Protected Health Information; Confidential Information Section of the Agreement or (ii) from a claim for liability asserted by a third party relating to the performance of this Agreement shall in no event exceed \$5 million; and
- (b) in the event of a decision of liability attributed to both Parties, each Party's obligation will be limited by its relative fault as compared to the other Party or a third party in such matter.

Each Party expressly waives any right to seek consequential, indirect, punitive, or special damages for claimed losses arising from or relating to the performance of this Agreement from the other Party including, without limitation, claims for loss of business, data, revenue, profits, or goodwill, even if the Parties have knowledge of the possibility of such damages and whether or not such damages are foreseeable.

8. Data Transmission Security. Data transmission security is the process of sending data from one computer system to another in a secure manner so that only the intended recipient of the data receives the data and the data sent is identical to the data received. When ePHI (Electronic Protected Health Information) is transmitted over an electronic communications network i.e. "the internet", transmissions of ePHI to and from Teladoc Health will utilize Secure File Transport Protocol (SFTP).

Employer is expressly prohibited from indirectly or directly, knowingly violating or attempting to violate the security of Teladoc Health's web sites, including, without limitation, accessing data not intended for such user or logging into a server or account which user is not authorized to access, attempting to probe, scan or test the vulnerability of the system or network or to breach security or authentication measures, scanning or testing the performance of the system or network, attempting to interfere with service to any user, host or network, including, without limitation, via means of submitting a virus or "trojan horse" to the Web site, overloading, "flooding", "mail bombing" or "crashing", or sending unsolicited electronic mail, including promotions and/or advertising of products or services. Violations of system or network security may result in civil or criminal liability. Teladoc Health will investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations.

9. Publicity. Teladoc Health may use Employer's trade name and logo on Teladoc Health's standard sales-deck and customer list(s) solely to indicate, during the Term, Employer's status as a customer of Teladoc Health, without other indications of endorsement. All other use of

Employer's trade name, trademark, service mark, or symbol in Teladoc Health's advertising, publicity or other promotional endeavors requires the prior written consent of Employer.

10. Dispute Resolution. Prior to the institution of formal court action, the Parties agree that any claim or controversy arising from this Agreement shall be considered and addressed by one representative from Teladoc and one representative from the Employer at a meeting held upon at least five business days' advance notice from the complaining Party. Such meeting shall be held at a neutral location agreeable to the Parties or via a virtual platform such as Microsoft Teams or Zoom. If the claim or controversy is not resolved by the representatives at such meeting or within five business days thereafter, either Party may proceed with court action.

11. Miscellaneous.

11.1 Entire Agreement; Amendment; Severability. This Agreement (including any Exhibits or attachments hereto) constitutes the entire agreement by and between Teladoc Health and Employer relating in any manner of its subject matter, and any representation, warranty, covenant, understanding or agreement not contained or incorporated in it by reference shall be of no force or effect. This Agreement supersedes all prior proposals, discussions, writings, and agreements between the Parties relating to the subject matter hereof. This Agreement may only be modified in writing, signed by an authorized representative of each Party. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. In the event any provision of this Agreement shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

11.2 Waiver. Any failure on the part of a Party to comply with any of its obligations, agreements, or responsibilities under this Agreement may be waived by the other Party to whom such compliance is owed. No waiver of any provision of such agreements shall be deemed a waiver of any other provision, nor shall any waiver constitute a waiver of any failure other than that waived.

11.3 No Third Party Beneficiaries. No person other than the Parties and their respective successors and permitted assigns is intended to be a beneficiary of this Agreement. In executing this Agreement, the Parties do not intend to create third-party beneficiary rights in anyone not a Party to the Agreement.

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11.4 Force Majeure. Neither Party shall have liability to the other as a result of a Force Majeure Event; *provided, however,* that the non-performing Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and restores performance as soon as such causes are removed. For purposes of this Agreement, "**Force Majeure Event**" means an event not reasonably foreseeable, beyond a Party's reasonable control, and occurring without its fault or negligence, including, without limitation (a) an act of nature, such as fire, flood, earthquake, storm, tornado, lightning, landslide, sink hole, or outbreak of disease, (b) a service failure caused by third parties, such as a power or utility outage or a labor dispute affecting suppliers or subcontractors, (c) a civil disruption such as war, invasion, insurrection, trade embargo, or activities by terrorists or public enemies, or (d) action by a governmental body that enjoins or prevents performance by a Party.

11.5 Notice. All notifications, consents, reports, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given: (i) three (3) days after being mailed (with return receipt requested), (ii) when emailed, or (iii) one (1) day after being sent via a recognized overnight courier service, to the Parties at the following addresses, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to Teladoc Health:

Teladoc Health, Inc.
Attn: Chief Legal Officer
2 Manhattanville Road, Suite 203
Purchase, NY 10577
Email: legalnotices@bestdoctors.com

With a Copy to: clientservices@teladoc.com

If to Employer:

City of Wilmington
Department of Human Resources
Attn: Charlotte B. Barnes
800 N. French St., 4th Flr. (HR)
Wilmington, DE 19801
Email: cbarnes@wilmingtonde.gov

11.6 Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws principles of such State. Jurisdiction and venue for any and all disputes under this Agreement shall be the state and/or federal courts of Wilmington, Delaware. Teladoc Health agrees to submit exclusively to the jurisdiction and venue of said courts.

11.7 Joint Preparation. This Agreement is deemed to have been prepared jointly by the Parties, and any uncertainty or ambiguity herein shall not be interpreted against either

Party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements

11.8 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts (and may be executed by way of email or electronic signature, and if so, shall be considered an original), all of which shall constitute one and the same instrument, and each Party hereto may execute this Agreement by signing one or more counterpart, which shall not affect the construction of this Agreement. Each signatory represents that he/she has full authority to sign this Agreement on behalf of his/her respective Party and to bind and obligate such Party to the terms hereof.

11.9 Subcontractors. Teladoc Health may use qualified consultants, subconsultants, or subcontractors to perform the services required under this Agreement, to be provided upon request in a list showing services to be rendered.

11.10 Discrimination and Harassment. In the of this Agreement, the Parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

11.11 Records. Teladoc Health shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed reasonably necessary by the Employer to assure proper accounting for all project funds. Such records shall be made available remotely for audit purposes to the Employer or its authorized representatives upon request but no more than once per year.

11.12 Reports and Information. To the extent such records are not protected by any confidentiality agreements or privacy laws, Teladoc Health shall make available remotely to Employer such reports as the Employer may reasonably request directly pertaining to the work or services undertaken pursuant to this Agreement.

11.13 Business License. If applicable, Teladoc Health shall obtain and/or maintain an appropriate business license from the Employer's Department of Finance.

11.14 Taxes. Teladoc Health shall withhold, if applicable, City of Wilmington city wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

11.15 Findings Confidential. All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copies, maps, graphics, slides, and documents prepared, assembled, drafted or generated by Teladoc Health under this Agreement are confidential, and except as otherwise permitted under this Agreement, Teladoc Health agrees that

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such documents shall not be made available to anyone, without the prior written approval of the Employer.

11.16 Successors and Assigns. This Agreement, and all the terms and provisions hereof, shall be binding upon and

shall inure to the benefit of the Employer and Teladoc Health, and their respective legal representatives, successors, and permitted assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Teladoc Health, Inc.		City of Wilmington	
Print Name	Title	Print Name	Title
		Charlotte B. Barnes	Director of Human Resources
Signature	Date	Signature	Date

Exhibit 1 Business Associate Agreement

This BUSINESS ASSOCIATE AGREEMENT ("**BAA**") is entered into by and between Employer (referred to herein as "**Plan Sponsor**"), on behalf of Plan Sponsor's Group Health Plan ("**Covered Entity**"), and Teladoc Health, Inc. and its affiliated companies (referred to herein as "**Business Associate**") pursuant to the Teladoc Health Services Agreement dated **October 1, 2020** ("**Agreement**"), the terms and conditions of which are incorporated by reference into this BAA. The Effective Date of this BAA shall be the same as the Effective Date defined in the Agreement.

Introduction

WHEREAS, the U.S. Department of Health and Human Services ("**HHS**") has promulgated privacy and security requirements reflecting the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), Public Law 104-191; and the American Recovery and Reinvestment Act of 2009 (the "**ARR Act**"), including, without limitation, the requirements of the Health Information Technology for Economic and Clinical Health Act (the "**HITECH Act**"), which is part thereof, enacted and established additional provisions for written business associate agreements and required these additional provisions be incorporated into all business associate agreements;

WHEREAS, the HIPAA Rules provide that a Covered Entity is permitted to disclose Protected Health Information ("**PHI**") to a Business Associate only if the Covered Entity has first obtained "satisfactory assurances," in the form of a written contract requiring that the business associate will appropriately safeguard such PHI;

WHEREAS, Business Associate will be providing services to the Covered Entity as described in the Agreement ("**Services**");

WHEREAS, Business Associate may, in the course of providing the Services to the Covered Entity, receive, create, use, and/or disclose PHI on Covered Entity's behalf which would create a business associate relationship between the Parties, thus necessitating a written contract that meets the applicable requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises contained herein, Covered Entity and Business Associate (each a "**Party**" and together the "**Parties**") agree as follows:

Terms

1. Definitions.

Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as set forth in the Privacy Rule, the Security Rule (as both are defined below) and/or the security and privacy provisions of the ARR Act and the HITECH Act that are applicable to business associates along with any regulations issued by HHS with respect to the ARR Act and the HITECH Act that relate to the obligations of agents and subcontractors of business associates.

- (a) "**Covered Services**" shall mean, as applicable, the activities related to administering the Expert Medical Services and/or the activities related to administering the parts of the Teladoc Services which are performed on behalf of Covered Entity, which include engagement activities and eligibility verification. The delivery of, and activities related to the delivery of, Cross-Coverage Consultations is not an activity performed by Business Associate on behalf of Covered Entity.
- (b) **Electronic Protected Health Information** or **ePHI** shall have the meaning given such term in 45 C.F.R. § 160.103, but limited to the information received from or created on behalf of Covered Entity by Business Associate to perform the Covered Services.
- (c) **HIPAA Rules** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- (d) "**Individual**" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (e) "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- (f) **Protected Health Information** or **PHI** shall have the meaning given such term in 45 C.F.R. § 160.103, but limited to the information received from or created on behalf of Covered Entity by Business Associate to perform the Covered Services.
- (g) "**Security Rule**" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- (h) "**Security Incident**" has the meaning set out in the Security Rule. Generally, a "Security Incident" means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.
- (i) "**Unsecured PHI**" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services ("HHS") guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740). Unsecured PHI can include information in any form or medium, including electronic, paper, or oral.

2. Permitted Uses and Disclosures by Business Associate. Business Associate may use and disclose PHI only as follows:

- (a) Business Associate may use or disclose PHI in order to perform its obligations under the Agreement relating to providing the Covered Services.
- (b) Business Associate may use or disclose PHI as Required By Law.
- (c) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- (d) Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that – (1) the disclosures are Required by Law, or (2) Business Associate obtains reasonable assurances from the entity to which the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the entity, and the entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Business Associate may use PHI to provide data aggregation services to Covered Entity.
- (f) Business Associate may use PHI to create de-identified information as defined by 45 C.F.R. §164.514(b). The Parties agree that once PHI is de-identified, it is no longer subject to this BAA.
- (g) Business Associate may use PHI to create a limited data set as defined by 45 C.F.R. §164.514(e)(2) and use and disclose such limited data set pursuant to 45 C.F.R. §164.514(e)(1).
- (h) Business Associate may use and disclose PHI for research purposes pursuant to a HIPAA compliant authorization form from the Individual or as permitted by and pursuant to 45 C.F.R. §164.512(i).
- (i) Business Associate may disclose PHI at the direction of Covered Entity to any other vendors of Covered Entity that provide other services for or on behalf of Covered Entity. Covered Entity hereby agrees that it shall not request or permit Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Covered Entity.
- (j) Business Associate agrees to use reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request pursuant to 45 C.F.R. § 164.502(b).
- (k) Subject to any form signed by an Individual prohibiting such Disclosure, Business Associate may provide to Plan Sponsor PHI, subject to the requirements of 45 C.F.R. § 164.504(f)(2), for the purpose of carrying out legitimate plan administration functions that the Plan Sponsor performs on behalf of Covered Entity. Plan Sponsor agrees it will only request PHI for legitimate plan administration functions.

3. Obligations and Activities of Business Associate. Business Associate agrees to:

- (a) not use or disclose PHI other than as permitted or required by this BAA or as Required By Law.
- (b) use commercially reasonable and appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA.
- (c) in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- (d) Report as soon as practicable, but in no event more than five (5) days of becoming aware, to Covered Entity any use or disclosure of the PHI not provided for by this BAA, any Breaches of Unsecured PHI as required at 45 C.F.R. 164.410, and any successful Security Incident of which it becomes aware. Successful Security Incidents shall not include pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of PHI.
- (e) mitigate, to the extent practicable, any harmful effect that is, or becomes, known of a use or disclosure of PHI by the Business Associate or any of its employees, agents, contractors or subcontractors in violation of the requirements of this BAA, the Privacy Rule, ARR Act or HITECH Act.
- (f) implement and use appropriate policies and procedures for the identification and notification of Breach.
- (g) make available PHI in a Designated Record Set to the individual or the individual's designee as necessary to satisfy Covered Entity's obligation under 45 C.F.R. § 164.524. Business Associate will, at the request of the Individual or Covered Entity, provide a copy of PHI directly to the Individual or the Individual's designee.
- (h) make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under C.F.R. § 164.526.
- (i) maintain and make available the information required to provide an accounting of disclosures to the Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- (j) comply with the requirements of Subpart E of 45 C.F.R. Part 164 to the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164.
- (k) make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner reasonably designated by the Secretary, for purposes of having the Secretary

determine Covered Entity's compliance with the Privacy Rule. Business Associate shall have an annual HIPAA compliance audit conducted by an independent third party auditor and, upon request by Covered Entity, provide the results of such annual audit to Covered Entity. In the event that a Breach occurs, Business Associate will conduct an additional audit which shall be shared with Covered Entity at Covered Entity's request as confirmation the issue causing the Breach was remediated.

4. Obligations of Covered Entity.

(a) To Inform of Privacy Practices and Restrictions:

- (1) Covered Entity shall notify Business Associate in writing of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate in writing of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(b) Representations by Covered Entity. Covered Entity represents that it has the right and authority to disclose PHI to Business Associate to enable Business Associate to perform its obligations and provide services to Covered Entity. Except as otherwise permitted in this BAA, Covered Entity shall not request that or permit Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity. Covered Entity will neither request nor require Business Associate to deliver any PHI to Covered Entity, plan sponsor, or a third party in violation of this BAA.

5. Term and Termination.

- (a) Term. This BAA shall take effect on the Effective Date and shall terminate when the Agreement terminates.
- (b) Termination for Cause. Both Parties agree that this BAA may be terminated by either Party upon breach of a material term of the BAA. The non-breaching Party shall:
- (1) provide the breaching Party the opportunity to cure the breach or end the violation within fifteen (15) days; and
 - (2) if cure of such breach is not possible or if the breaching Party does not cure the breach or end the violation within fifteen (15) days, terminate the BAA.
- (c) Effect of Termination. Upon termination of this BAA for any reason, Business Associate shall:
- (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Destroy the remaining PHI that Business Associate still maintains in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this section, for as long as Business Associate retains the PHI;
 - (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at section 2(c) and 2(d) which applied prior to termination; and
 - (5) Destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- (d) Survival. The obligations of Business Associate under this section 5 shall survive the termination of this BAA.

6. Miscellaneous.

- (a) Regulatory References. Any reference in this BAA to a section of the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
- (d) No Third-Party Beneficiaries. Nothing expressed or implied in this BAA is intended to confer, nor shall anything in the BAA be deemed to confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- (e) Governing Law. This BAA shall be governed by and construed in accordance with the laws of the State of Delaware.

EXHIBIT 2-TELADOC SERVICES EXHIBIT

This **Teladoc Services Exhibit** (the "**Exhibit**") is entered into on **October 1, 2020** ("**Effective Date**"), by and between **Teladoc Health, Inc.** ("**Teladoc Health**") and **City of Wilmington** ("**Employer**"), pursuant to the terms of the Teladoc Health Services Agreement entered into by the Parties, dated **October 1, 2020** ("**Agreement**"), the terms and conditions of which are incorporated by reference into this Exhibit. Teladoc Health and Employer shall be referred to herein as the "**Parties**" and each individually as a "**Party**".

I. Introduction

- A. Teladoc Health provides a suite of telehealth services, as more fully described below (collectively, the "**Teladoc Services**"), and has entered into a contract with one or more professional associations that employ and/or contract with physicians (collectively, the "**Provider**"), and for which Teladoc Health provides various operational and administrative services to the Provider. The physicians who are employed by, or under a contractual arrangement with, the Provider form a network that is designed to facilitate medical consultations provided by a physician who provides patient care, via telephone or web-based video, for another physician when the other physician is not available ("**Cross-Coverage Consultation(s)**") to individuals and groups desiring to purchase such Cross-Coverage Consultations. The arrangement between Teladoc Health and the Provider permits Teladoc Health to offer a program to its customers that consists of: (a) a network of providers who provide medical consultations via telephone or web-based video; and (b) support for the operation and administration of that network, as further described herein.
- B. Employer desires to purchase the Teladoc Services for use by certain of its employees, retirees under the age of 65 ("**Employees**") and their spouses and eligible dependents ("**Eligible Dependents**") as an additional benefit in connection with Employer's employee benefits program. "Eligible Dependent" means a "dependent," as defined under the Internal Revenue Code, I.R.C. § 152, or as may be mutually agreed between the Parties. Employees and Eligible Dependents are collectively and each referred to as "**Member(s)**".

II. Term and Termination

- A. This Exhibit commences on the Effective Date and will continue in force for an initial term that will end on the **third** anniversary of the Effective Date ("**Initial Term**"), unless terminated earlier pursuant to **Section II(B)** below. Unless otherwise agreed by the Parties, at the expiration of the Initial Term, the Agreement will be extended automatically on a year-to-year basis for a maximum of three (3) additional years, unless either Party has given written notice to the other at least 60 days prior to the scheduled expiration of the Agreement of its election not to extend the Agreement. Any extensions of this Agreement past the Initial Term are referred to as "**Renewal Term**". The Initial Term and any Renewal Terms of this Agreement are collectively referred to as the "**Term**."
- B. In addition to the termination provisions outlined in **Section 2** of the Agreement, either Party may terminate the Agreement for convenience on each anniversary of the Effective Date by providing 60 days' advance written notice to the other Party.

III. Teladoc Services

- A. During the Term, Teladoc Health will provide the Teladoc Services described in this Exhibit, which consist of Teladoc Services to Members and Teladoc Services to Employer. As used in this Exhibit, the following terms shall have the following meanings:

"**Consultation**" means a unit of the Teladoc Services for a Member (*for example, an instance of General Medical Cross-Coverage Consultation*).

"**PEPM**" means "Per Employee Per Month," which the Parties recognize as a common term in the health care industry. For purposes of this Exhibit, PEPM is defined as the applicable rate paid by Employer to Teladoc Health for each Employee who is eligible to utilize the Teladoc Services each month.

"**Physician**" means a doctor who is licensed to practice medicine and/or osteopathic medicine and is associated with the Provider to provide Cross-Coverage Consultations.

- B. **Teladoc Services for Members.** Teladoc Health will provide the following Teladoc Services to Members:

1. The Teladoc Services include access to the Physicians, who are selected and engaged by the Provider to provide patient and Physician interaction, whereby the Physician may diagnose the patient's ailment, recommends therapy, and if necessary and appropriate, writes a non-DEA controlled prescription. The Teladoc Services are designed to provide Physician access in the states where the Members live and travel. Each Physician shall be licensed to practice medicine and/or osteopathic medicine, be technologically proficient, trained in Cross-Coverage Consultations, and covered by medical malpractice insurance having limits equal to or greater than the minimum required limits in the state where such Physician practices. Cross-Coverage Consultations are not delivered via Internet questionnaires. Teladoc Health has the right to limit or restrict the Teladoc Services in any state or jurisdiction where the provision of such services is or would be contrary to applicable rule, law or regulation and shall provide Employer written notice of such limitation or restriction within 30 days.
2. It is understood by the Parties that the Physicians will not prescribe any Drug Enforcement Agency ("**DEA**") controlled substances or narcotics and operate subject to applicable state regulations. Teladoc Health is not required to guarantee that

the Member will receive a prescription, and only the Members who have completed the necessary steps to create the legally mandated doctor/patient relationship (as described herein) will receive Cross-Coverage Consultations. Those steps include: (i) completing a comprehensive electronic health record ("EHR"), either online or by telephone with a designated Teladoc Health representative (It being understood that, in the event the Member fails to complete the EHR, the Member will not have access to the Physicians, and Teladoc Health will so advise the Member when he/she accesses the Teladoc Services); (ii) agreeing to Teladoc Health's Terms and Conditions confirming an understanding that the Provider is not obligated to accept the Member as a patient, and that the Member's participation in the Teladoc Services may be cancelled at any time without recourse by the Member; and (iii) the Member also understands and acknowledges that the Teladoc Services provide Cross-Coverage Consultations when the Member's primary care physician is not accessible. If at any time a Physician or other provider determines that the Member's condition is a life-threatening emergency, he or she shall direct the Member to the nearest emergency facility.

3. The Teladoc Services consist of the following:

i. **Included Teladoc Services:**

- a. **General Medical:** Toll-free access to telephone or web-based video Cross-Coverage Consultations provided by a Physician whereby the Physicians diagnose common or routine conditions, recommend treatment or direct the Member to contact his/her primary care physician, and if necessary and where appropriate, write a non-DEA controlled prescription. General Medical access is available on-demand 24 hours, 365 days per year. Members shall have the option to schedule Consultations currently between the hours of 7AM to 9PM local time, seven days a week, subject to availability.

ii. **Optional Teladoc Services:**

- a. **Caregiver:** Allows Members to designate a third-party care recipient to receive a General Medical Consultation. Applicable Physician Consult Fees will apply. Employer may opt-out of Caregiver upon notice to Teladoc Health.

4. Teladoc Health agrees: (i) upon receipt of written notification by Employer of a Member's eligibility for Teladoc Services, to initiate that Member's identity in the Member database using Employer's identification number, and begin processing that Member so that he/she may receive Teladoc Services; (ii) to provide and maintain an adequate system, forms and other resources for Members to: (a) complete the required EHR online, and (b) access and agree to Teladoc Health's Terms and Conditions.
5. Teladoc Health further agrees to: (i) maintain a database of the Members' information (in an electronic format that is compliant with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA")), including but not limited to those changes adopted and incorporated by Section XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA") known as Health Information Technology for Economic and Clinical Health ("HITECH") Act, and update the database periodically with information provided by Employer or its third party administrator as new Members are enrolled; and (ii) provide initial training for Employer's designated employees (*i.e.*, *HR personnel*) at the time of implementation. Notwithstanding the foregoing, Employer acknowledges and agrees that: (a) Employer will be responsible for providing training and administering the Teladoc Services to Members; (b) if Employer requests Teladoc Health to attend any events such as, but not limited to, enrollment meetings, health fairs, etc., Teladoc Health will charge additional fees for attendance as mutually agreed by the Parties.

C. **Teladoc Services for Employer.** Teladoc Health will provide the following services to Employer.

1. **Account Support.** Teladoc Health will be available to Employer to assist with the following:

- Implementing the Teladoc Services
- Launching the Member Engagement Package(s) described below, and monitoring its performance
- Providing assistance to Employer in answering questions and resolving issues
- Reviewing and explaining reporting

2. **Reporting.** Teladoc Health will provide Employer with the following reporting:

- **Monthly** standard utilization reporting package*
- **Quarterly** standard savings reporting package*
- If Employer requests Teladoc Health to prepare any non-standard reports that require information technology programming, Teladoc Health will charge the Employer an additional fee of two hundred dollars (\$200) per hour, times that number of hours necessary for such non-standard reporting program development.

*The information included in any such report to Employer will be de-identified (*i.e.*, aggregated). In accordance with applicable law, Teladoc Health will not share any personal identifiable information of any Member with Employer in such reports.

3. **Communications & Member Engagement.** Fees include the following Member Engagement Package(s):

i. **Member Engagement Package:**

- a. Teladoc Health will provide a template description of the Teladoc Services for use by the Employer to communicate the Teladoc Services to Employees. Any changes or modifications to such template description, and any and all materials used by the Employer or its agents to describe the Teladoc Services, must be approved in advance in writing by Teladoc Health prior to distribution. Such communications include, but are not limited to, those that are in written form, on websites, on the radio, on television, sent by email, sent by fax, etc. In addition, the Employer hereby authorizes Teladoc Health to communicate directly with the Members for the purpose of: (i) promoting the Teladoc Services and ancillary services or products related to the provision of remote care; and (ii) treatment, payment and health care operations of Teladoc Health.
- b. Teladoc Health will perform the following Member Engagement activities (*including postage and processing costs, if applicable*):
 - **Benefit Education:** Monthly benefit education communications delivered by email, including eligibility awareness content aligned with seasonally relevant themes.
 - **Access to Marketing Hub:** Access to a secure self-service Employer portal providing access to a repository of customizable communication pieces to support onboarding, and increase awareness & utilization.

***Employer Responsibilities:** Provide the Teladoc Health approved description of the Teladoc Services to Employees. Cooperate with Teladoc Health in implementing the Teladoc Services. Provide consistent contextual placement of content and messaging related to the Teladoc Services across all appropriate Employee touch-points (e.g. Employee Benefits Portal, Direct Outreach, Open Enrollment, Newsletters, etc...) Provide Teladoc Health with timely and accurate contact information for Employees, including: Name (first, last, middle initial), mailing address, and email address.*

IV. Eligibility and Fees

- A. **Eligibility Files.** By the **1st** day of each month, Employer, or its third party administrator, shall deliver to Teladoc Health an accurate file identifying the number of Employees eligible to utilize the Teladoc Services in that month (the "**Eligibility File**") and their applicable contact information, in a format approved by Teladoc Health. If Employer, or its third party administrator, fails to deliver the Eligibility File by the **1st** day of the month, then the last valid Eligibility File delivered to Teladoc Health will be deemed to be the Eligibility File for that month. Alternatively and as applicable, Employer may either provide Eligibility File information via Teladoc Health's Client Site portal, or via a Real Time Eligibility (RTE) process, as mutually agreed by the Parties. If Employer subsequently requests a modification to their method of delivering Eligibility File information, Teladoc Health may charge the Employer an additional fee of two hundred dollars (\$200) per hour, times that number of hours necessary to effect such modification.

B. **Fees.**

1. Employer agrees to pay Teladoc Health the following fees (collectively, the "**Fee**"):
 - i. a recurring PEPM Fee of US **\$1.99** for each Employee eligible to utilize the Teladoc Services each month.
 - ii. The PEPM Fee includes an assumption of up to **30%** annual utilization of the General Medical Services (the "**Utilization Target**"). If actual annualized utilization exceeds the current year's Utilization Target, the PEPM Fee shall increase for the next Renewal Term by **\$0.25** for each **5%** increment of utilization in excess of the Utilization Target. In addition, a new Utilization Target will be set for the next Renewal Term by rounding up the actual annualized utilization to the nearest 5%. For example, where the Utilization Target for the current year is 40%, if actual annualized utilization in that year is 43%, the Utilization Target for the following year will be increased to 45% and the PEPM Fee for the following year will increase by \$0.25.
2. The Fee is based on approximately **1,130** Employees in the Eligibility File each month.
3. With 60 days' advance written notice to Employer, the PEPM Fee set forth above may be increased on each anniversary of the Effective Date by five (5%) percent rounded to the nearest penny if the Teladoc Health book of business pricing is being increased as a result of overall book of business results, even if actual utilization does not exceed the Utilization Target.
4. The total amount payable under this Agreement by Employer shall not exceed thirty-two thousand dollars (\$32,000.00) per year unless mutually agreed upon by both Parties in writing. Notwithstanding the foregoing, the Parties agree that the Fee is subject to increase in the event that the employee count changes and/or annual utilization exceeds the amounts stated above.

C. **Payment of Fees.**

1. Teladoc Health will submit an invoice to Employer on the **4th** day of each month based on the Eligibility File delivered by Employer to Teladoc Health for that month ("**Invoice**"), and Employer agrees to pay such Invoice by the last day of that month. Notwithstanding the foregoing, should Employer determine an error was made in the Eligibility File, Employer may request a credit, not to exceed 5% of the monthly PEPM Fees paid by Employer to Teladoc Health for the corresponding month as soon as practicable and in no event later than ninety (90) days after the end of the month to which the PEPM Fee pertains.

2. If applicable, Teladoc Health will submit an Invoice to Employer for Physician Consult Fees on the **1st** day of each month with respect to Consultations that occurred within the prior thirty (30) day period, and Employer agrees to pay such Invoice by the last day of that month; *provided, however*, that if claims are sent via EDI 837 file transfer, Teladoc Health will submit an 837 transaction file for any Physician Consult Fee to the applicable healthcare payer.
3. Unless Employer directs otherwise in writing, Teladoc Health will deliver all Invoices for the Teladoc Services via email to the following email addresses: dbsmith@wilmingtonde.gov and jdray@wilmingtonde.gov.
4. If any Fees due to Teladoc Health become more than sixty (60) days delinquent, Teladoc Health may suspend provision of the Teladoc Services until such amounts have been paid.

IN WITNESS WHEREOF, the Parties have caused this Exhibit to be executed by their duly authorized representatives as of the Effective Date.

Teladoc Health, Inc.		City of Wilmington	
Print Name	Title	Print Name	Title
		Charlotte B. Barnes	Director of Human Resources
Signature	Date	Signature	Date

Wilmington, Delaware
September 17, 2020

#4859

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF

Sponsor: **THE CITY OF WILMINGTON**, that the License Agreement between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware, and **NEW CINGULAR WIRELESS PCS, LLC**, (“New Cingular”) authorizing New Cingular to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington, a copy of which is attached hereto as Exhibit “A” and made a part hereof, is hereby approved, and the Mayor or his designee and City Clerk are hereby authorized to execute as many copies of said Agreement as may be necessary.

Council Member Freel

Co-Sponsor:

Council President Shabazz

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This Resolution approves the License Agreement (“the License”) between the City and New Cingular Wireless PCS, LLC (“New Cingular”) to, among other things, construct, install, maintain, and operate wireless telecommunication facilities in the public rights of way of the City of Wilmington. This equipment is part of New Cingular’s network for the operation of wireless communications services. The initial term of the License is ten (10) years commencing on September 17, 2020 and shall continue thereafter until terminated by either party.

FISCAL IMPACT STATEMENT: New Cingular will pay the City an annual license fee in the amount of \$270 per node (as that term is defined by the License) per node user. Consistent with the License, the fee may be adjusted based upon a study of the City’s actual costs for maintaining the rights of way or a change in applicable law.

EXHIBIT A

A LICENSE AGREEMENT AUTHORIZING NEW CINGULAR WIRELESS PCS, LLC
TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, OPERATE, RELOCATE, REPLACE
AND REMOVE CERTAIN FACILITIES RELATING TO WIRELESS
TELECOMMUNICATIONS FACILITIES INSTALLED IN PUBLIC RIGHTS-OF-WAY IN
THE CITY OF WILMINGTON

This License Agreement, ("Agreement" or "License") dated this ____ day of _____, 2020 ("Effective Date"), is made by and between the CITY OF WILMINGTON ("City") and NEW CINGULAR WIRELESS PCS, LLC, ("Licensee").

RECITALS

WHEREAS, Licensee, has requested consent of the City to use certain Public Rights-of-Way of the municipality to construct, maintain, and operate its facilities for use in providing wireless telecommunications services within the municipality for its own business purposes and profit; and

WHEREAS, it is the policy of the City to permit such entry into the corporate limits and such use of the Public Rights-of-Way for the provision of telecommunication services, subject to the exercise of the City's police powers, and subject to the right of the City to charge for that use; and

WHEREAS, the City has agreed to grant a non-exclusive license to Licensee, for that purpose, as more fully set forth below; and

WHEREAS, Licensee desires to use certain City Public Rights-of-Way and is willing to do so consistent with this Agreement.

NOW, THEREFORE, and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the parties hereby agree as follows:

1. Definitions.

Capitalized terms have the meaning specified in this section; terms not defined herein shall have the meaning set forth in the *Wilmington City Code* ("Code") and City's *Regulations for Placement and Maintenance of Wireless Telecommunications Facilities* ("Manual"), and if not defined there, their ordinary meaning. Singular terms include the plural; shall and will are mandatory, and "may" is permissive. References to statutes and regulations refer to the same as amended or renumbered.

1.1. "Agreement" or "License" means this Agreement, together with Appendices and Exhibits attached this Agreement, if any, and any amendments or modifications thereto.

1.2. "Applicable Law" or "Law" means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations.

1.3. "Authorizations" means the permissions Licensee must have in addition to this License to deploy Facilities and/or provide Services, which may include licenses, permits, zoning approvals; variances, exemptions; grants of authority to use private rights of way and/or

easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4. “Authorized Facilities” means Facilities that comply with the requirements of this License, and the City Code and Manual, and have all necessary Authorizations in full force and effect.

1.5. “Central Communications Hub” refers to a site that receives signals from Nodes, and includes equipment that propagates and/or converts, processes or controls the communications signals transmitted and received from the Nodes.

1.6. “Construction and Maintenance” and variations of those terms refer to any activity performed in the Public Rights-of-Way with respect to the Facilities, including construction, modification, replacement, repair, operation, maintenance, removal or relocation.

1.7. “Facility” or “Facilities” means any and all equipment and installations of any kind owned by Licensee and under the control of Licensee that are reasonably necessary and appropriate for the provision of Services including, but not limited to any optical repeaters, converters, power amplifiers, radios, multiplexers, remote radioheads, antenna, aboveground and underground fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches, cabinets, enclosures, and control boxes, and supporting structures, whether new, existing or replacement structures, and whether referred to singly or collectively.

1.8. “License” means the non-exclusive right granted, by ordinance and subject to this Agreement, to Licensee to Construct and Maintain the Facilities on, over, under, upon, across, and along the Public Rights-of-Ways within the License Area.

1.9. “License Area” shall mean all the area within the boundaries of the City.

1.10. “Node” means a Facility or set of Facilities at a fixed location that includes one or more radiofrequency transmitters or antennas, which wirelessly connects to mobile stations and which is connected along with other Nodes via a high capacity transport medium to a core network. A Node must be a Small Wireless Facility.

1.11. “Person” shall have the same meaning as the definition contained in City Code Section 42-704(v).

1.12. “Public Rights-of-Way” shall have the same meaning as the definition contained in City Code Section 42-704(x).

1.13. “Services” means any telecommunications service provided by means of the Facilities by Licensee pursuant to a certificate issued by the State of Delaware, or a license issued by the Federal Communications Commission; or the leasing, operation or maintenance of Facilities by Licensee, except that the term does not include cable service as defined in 47 USC 522(6), open video services or other multichannel video programming services other than video programming provided on a common carrier basis.

1.14. “Small Wireless Facility” has the same meaning as the term “small wireless facility” in 47 C.F.R.1.6002(l), as the same may be amended from time to time.

2. Grant of License

2.1. Grant. The City hereby grants to Licensee the nonexclusive right to Construct and Maintain Nodes comprised of Authorized Facilities within the Public Rights-of-Way, which License shall be exercised at Licensee's sole cost and expense, and which shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Rights-of-Way. The License is not divisible, and Licensee may not grant any person the right to use or occupy the Public Rights-of-Way. The grant does not extend to any other service or Facility, and Licensee may be required to obtain an additional License or an amendment to this License before using and occupying the Public Rights-of-Way to provide additional services or Facilities. It is the intent of the parties that this License be liberally amended or additional Licenses issued to allow for the provision of additional services, subject to appropriate and lawful conditions.

2.2. Special Conditions on Grant.

2.2.1. Licensee may place Nodes in the Public Rights-of-Way, but may not place Central Communications Hubs in the Public Rights-of-Way.

2.2.2. Unless exempted by virtue of the City Code and Manual, each Node shall be placed subject to a wireless permit, as that term is used in Section 1.3 of the Manual. The permit will approve the location and the design of any particular Node.

2.2.3. Designs attached to this Agreement have been pre-approved pursuant to Section 2.6 of the Manual, for use at the locations indicated in that approval. The City may direct Licensee which pre-approved design to use in particular locations if it is determined that one design is more consistent with the surrounding areas than others. The City will not unreasonably refuse to approve other designs or locations for Facilities if the City determines that the design (a) otherwise complies with Applicable Law; (b) is subject to concealment elements and aesthetic requirements that minimize visual impacts and ensure the Facilities will be consistent in size and shape with existing structures in the same area; and (c) does not contain lighting elements (other than on City approved Light Poles) or produce noise that would violate the noise ordinances of the City. Ground-mounted cabinets associated with the Nodes are not permitted other than with the express review and approval of the City. In approving locations, the City may ensure that the Node Facilities are placed to minimize impacts on adjoining property owners, and other Public Right-of-Way users. A Node will not be approved in an area where the lines of the incumbent local exchange carrier are underground, except where the Facilities can be concealed within or on an existing structure to the reasonable satisfaction of the City, or an existing structure may be replaced with a structure of a design satisfactory to the City; unless Licensee demonstrates that denial of the application would prohibit or have the effect of prohibiting the provision of personal wireless services, within the meaning of 47 U.S.C. §332(c)(7), and otherwise violate Applicable Law, such that the City is required to approve the Facilities.

- 2.2.4. Subject to the City's permitting requirements, Licensee may repair and replace Facilities, so long as the appearance of the Facilities or property affected by the repair or replacement does not change.
- 2.2.5. Subject to obtaining the written permission of the owner(s) of the affected property, and subject to conditions of this License and the City Code, Licensee may enter upon the Public Right-of-Way to perform Construction and Maintenance on Nodes in or on utility poles, street light poles or other structures within the Public Right-of-Way lawfully owned and operated by City or by other entities. *Provided that*, use of any street light pole or traffic signal poles or other structure owned, leased or otherwise subject to the control of the City in the Rights of Way ("City Facility") requires a separate agreement with the City consenting to, and establishing the conditions for such use. If Licensee proposes to use a street light pole for which the City paid or pays a fee for installation or service, the City may require Licensee to provide City title to that street light pole as a condition of use as provided in such separate agreement.
- 2.3. No Real Property Interest. Nothing herein shall be deemed to grant, convey, create or vest in Licensee a real property interest in land, including any fee, leasehold interest, or easement, or the right to place the Facilities at any particular location within the Public Rights-of-Way.
- 2.4. Compliance with Law.
- 2.4.1. The exercise of License rights by Licensee is subject to, and strictly conditioned upon compliance with the terms of this Agreement and Applicable Law now existing or hereinafter enacted.
- 2.4.2. All work upon the streets and public places of the City performed by Licensee shall be in accordance with all applicable standards, codes, and ordinances, and will be done under the general supervision of the Department of Public Works and/or Department of Licenses & Inspections. Nothing in this Agreement shall be construed as a waiver of any laws, regulations or rules of the City or of the City's right to require the Licensee to secure the appropriate permits or Authorizations, or to pay the applicable fees associated with the same. Nothing in this Agreement shall act as a waiver of the City's police powers. Nothing herein prevents Licensee from challenging the applicability of a particular fee or regulation to it on the ground that it is unduly discriminatory or preempted by state or federal law.
- 2.4.3. Continued occupancy of the Public Rights-of-Way is contingent upon strict compliance with the terms and conditions of any permit. Subject to Section 13.8, if material terms and conditions of any permit are no longer enforceable, then the City may terminate the permit and make continued occupancy subject to such conditions as it may impose with respect to the Facilities pursuant to Applicable Law. This Agreement does not authorize occupancy for any purpose where the occupancy is not permitted under the City Code or Manual.
- 2.5. Conditions Precedent. The License shall commence upon the Effective Date, provided that the Licensee shall have met each of the conditions precedent set forth below and otherwise in this Agreement (unless the City agrees to waive any of the conditions precedent), at which time it shall become effective: The Licensee shall have secured its insurance policies as set

forth in Section 10 of this Agreement and delivered the certificate of insurance to the City's Risk Manager, with proof that the policies will be in effect on or before the Effective Date, and that the policies are in accordance with this Agreement.

2.6. Conditions Subsequent: RF Emissions. Without limiting the other provisions of this Agreement, Licensee must cease its operations if it is not in compliance with Federal Communications Commission ("FCC") regulations governing RF emissions (including any standards that may be adopted in the future), as the same may be amended from time to time, except to the extent that the FCC or other Order, Ruling or Regulation permits it to continue to operate. The issuance of this License is not intended to insulate Licensee from any claim or any remedy based on RF emissions. On request, or to the extent that Licensee is aware of any non-conformance, Licensee shall submit a report identifying applicable standards, measured emissions, and any area where it has Facilities that do not comply with applicable standards. The report will not be treated as confidential.

2.7. Other Authorizations. As a condition of this grant, Licensee is required to obtain and is responsible for any Authorization that may be required for the installation, operation or maintenance of the Facilities.

2.8. Licensee's Expense. Except as specifically provided otherwise, all costs incurred by Licensee in connection with its compliance with, or enjoyment of, this License shall be borne by Licensee and not by City, and all work that must be performed in order to permit the placement of Facilities at particular locations (including work required to comply with Applicable Law relating to persons with disabilities) shall be paid for by Licensee.

2.9. Application to Subcontractors. Licensee is responsible for ensuring that all contractors and subcontractors comply with the requirements of this License and Applicable Law when performing work on behalf of Licensee, and Licensee is jointly and severally responsible for their acts and omissions.

2.10. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (other than the City and Licensee), any right, benefit or remedy under this Agreement of any nature whatsoever.

3. Term.

This Agreement shall be in force and effect for an initial term of ten (10) years, and shall continue in force and effect thereafter until properly terminated by either party. Either party may terminate the Agreement at the end of its initial ten-year term, or at any time thereafter, by giving written notice of its intention to do so no less than two (2) years before the proposed date of termination. Upon termination, all of City's consents to use and occupancy of the Public Rights-of-Way, and Licensee's rights to use and occupy the Public Rights-of-Way are also terminated. Notwithstanding the foregoing, all of Licensee's duties related to use of the Public Rights-of-Way, and its duties to indemnify the City, shall survive termination until the Facilities are removed, or Licensee's obligations terminate by agreement of the parties. It is understood and agreed that the decision of whether to renew or to terminate this Agreement pursuant to this Section shall be made by those elected officials then in office under such circumstances as may then obtain. Provided, however, nothing in this paragraph is intended to expand or contract any rights that Licensee may have as a matter of state or federal law to obtain a license from City.

Public Rights-of-Way License Fee

3.1. Scope. The compensation set forth herein is for use of the Public Rights-of-Way to install wireless Nodes for the provision of Services. Licensee may use the Public Rights-of-Way to provide additional services only with the agreement and consent of the City. Licensee may not permit any other person to place equipment that person owns or controls as part of that Node without agreement of, and payment of an additional fee to the City as described below.

3.2. When Additional Fees May Be Required. If a Node is to be modified so that it no longer is a small wireless facility, an additional fee must be paid, which fee shall be established by negotiation prior to modification. If a facility is proposed which does not meet the definition of a Node, the fee shall be established by negotiation prior to installation. The fees that may be charged are only subject to such limits as may be established by state and federal law.

3.3. Amount. Subject to Sections 3.9-3.10, Licensee will pay a fee of \$270.00 per Node per annum-per Node user. Licensee is a user, and any person who owns or controls any portion of the Node is also a user, provided that, for a Licensee that does not provide Services, Licensee and one entity providing Services count as a single user. This amount shall be adjusted annually based on the percentage increase in the annual average CPI-U for the Philadelphia-Camden-Wilmington Region, with the 2019 annual average serving as the reference period and with the first adjustment being made for the calendar year 2021.

3.4. Holdover. Subsequent to the termination of this Agreement, if Licensee, without the City's express approval, continues to occupy the Public Rights-of-Way and continues to operate; or if it ceases operation but fails to remove the Facilities within 120 days of the termination of this Agreement; the City may, at its option, increase any of the fees charged by 2.5 times.

3.5. Payment. The annual rent due for Node shall be paid in accordance with this paragraph. On the first day of the month following approval of any Node, Licensee shall pay Licensor the amount owed per annum (as adjusted by CPI) for the approved Node multiplied by a percentage equal to the number of remaining months in the fiscal year divided by 12. Thereafter, on July 1 of every year, Licensee shall pay Licensor the annual rent owed for the Node. If Licensee subsequently adds an additional user, from the date of installation of the additional user Licensee shall pay Licensor the \$270 per annum (as adjusted by CPI) rent at a percentage equal to the number of remaining months in the fiscal year divided by 12. Thereafter, on July 1 of every year, it shall pay the Licensor the rent owed for such additional users. If Licensee ceases to use a Node, Licensor will rebate an allocable portion of the rent paid in advance, based upon the date all of Licensee's Equipment are removed, and the affected property restored as required under City Code Section 42-713(g).

3.6. No Accord or Satisfaction. The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the City to audit Licensee's books and records, Licensee shall produce its books and records for review at the City's offices, or in such other manner acceptable to the City. The City may inspect Facilities as necessary to ensure that the fees owed under this Agreement are being paid. If an audit shows that Licensee

has underpaid the amount due hereunder by 5% or more for any year reviewed, the cost of the audit shall be paid by Licensee.

3.7. Interest on Late Payment. Interest will be charged on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate the prime rate charged by the bank the City uses as its main depository, plus 3%.

3.8. Payment Not In Lieu. The fee specified in this Section 3 is not in lieu of any other license, tax, fee or assessment, which may be imposed under this Agreement, the City Code or Applicable Law, or in lieu of rents for use or in return for a license to use public property other than the Public Rights-of-Way as herein specified.

3.9. Adjustment Based on Cost Study. The City may adjust these fees at any time if based on a study of its actual costs, an adjusted fee is a reasonable approximation of costs, the costs are reasonable, and are non-discriminatory. In the event the City conducts a study prior to any fee adjustment, the City must provide any study and a breakdown of actual costs considered resulting in a fee adjustment and Licensee shall reimburse the City for a proportional share of the costs of conducting such study, based on the number of similarly situated Licensees whose compensation for use of the rights-of-way is based on cost.

3.10. Adjustment To Non-Cost-Based Rates. Should Applicable Law permit City to charge a fee that is not cost-based, City may adopt any lawful fee, and apply it to Licensee at any time two (2) years after the effective date of this Agreement.

4. Work in the Public Rights-of-Way.

4.1. No Limitation on Obligation to Comply With Applicable Laws. Without limiting its obligations under Section 2, Licensee shall comply with the requirements of this Section.

4.2. No Interference.

4.2.1. No Public Right-of-Way or other public place shall be obstructed longer than necessary during Construction and Maintenance, and once completed, any disturbance associated with the Construction and Maintenance to the Public Rights-of-Way or public place, shall be restored as required under City Code Section 42-713(g) and any other Applicable Law. No part of any Public Right-of-Way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be damaged. However, should any such damage occur, the Licensee shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Licensee. In no event may Facilities be constructed or maintained in a manner that creates a hazardous condition, or a condition that is inconsistent with Applicable Law protecting persons with disabilities.

4.2.2. Without limiting the City's authority under this Agreement or the City Code, the City may manage Construction and Maintenance within the Public Rights-of-Way to prevent undue burdens on those Public Rights-of-Way and users of them; and to maximize efficient use of the Public Rights-of-Way. The City may require Licensee to coordinate construction activities with other entities occupying the Public Rights-

of-Way. And where there are conflicting requests for construction of Facilities similar to those authorized hereunder at a particular location, the City, after providing Licensee and other affected entities an opportunity for comment, may require consolidation of Facilities or develop a non-discriminatory means of allocating sites that may be appropriate for placement of facilities in the Public Rights-of-Way.

4.3. Closing of Public Rights-of-Ways. Nothing in this Agreement shall be construed as a waiver or release of the rights of the City in and to the Public Rights-of-Ways. In the event that all or part of the Public Rights-of-Ways within the License Area are (1) closed to pedestrian and/or vehicular traffic and/or utilities and services comparable to Services; or (2) vacated in accord with the City Code, or if ownership of the land in, under or over the affected Public Rights-of-Ways is otherwise transferred to another Person, all rights and privileges granted pursuant to this Agreement with respect to such Public Rights-of-Ways, or any part of such Public Rights-of-Ways so closed, vacated, or transferred, shall cease upon the effective date of such closing, vacation, or transfer, and Licensee shall remove its Facilities from such public Rights-of-Ways, unless an agreement is otherwise reached with the new party owning or controlling the subject property. Nothing herein is meant to preclude Licensee from pursuing any rights it may have under state law against a private Person if the Public Right-of-Way is vacated for the benefit of that Person. The City shall provide reasonable prior written notice to Licensee of any such closing, vacation, or transfer to allow Licensee to remove its Facilities where the right to continue to occupy and use such Public Rights-of-Way is not reserved for Licensee.

4.4. Relocation of Facilities.

4.4.1. Licensee may be required to remove and relocate its Facilities, subject to such notice as may ordinarily be provided to users of similar structures but in no event less than 60 days' notice (except in an emergency), if: the structures to which they are attached or located within are removed, ordered to be removed or relocated; or to accommodate the use of the Public Rights-of-Way by other entities; or to ensure that the facilities or structures to which they are attached or located within do not interfere with the use of the Public Rights-of-Way by the public, or present a risk to public health or safety. To the extent that Licensee is required to remove or relocate its Facilities to accommodate the use of the Public Rights-of-Way by a third party, nothing herein prevents Licensee from seeking compensation from that third party (other than parties identified in Section 4.4.3).

4.4.2. If Licensee's Facilities are located aboveground in the Public Right-of-Way and the distribution lines of the incumbent local exchange carrier or electric utility subsequently are placed underground, Licensee's aboveground Facilities (other than those comparable to any Facilities of the incumbent local exchange carrier which are permitted to remain aboveground) shall be placed underground at the same time, except for such Facilities which, because of their concealment elements and location, are specifically approved by permit to remain aboveground. Nothing herein prevents Licensee from submitting an application for placement of Facilities aboveground, subject to showing that as proposed, the City is required to grant the application under Applicable Law.

- 4.4.3. The rights and privileges granted hereby shall not be in preference or hindrance to the right of the City, or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works, public improvements or public projects. In the event that the Facilities interfere in any way with the construction, maintenance or repair of such public works, public improvements, or public projects, the Licensee, at its expense, shall (a) immediately commence work to remove or relocate the object of such interference if emergency circumstances exist or (b) otherwise, within sixty (60) days of notice of such interference, protect or relocate its Facilities, as may be directed by the relevant authority.
- 4.4.4. The City shall cooperate with Licensee in finding a suitable alternative location for any relocated Facilities removed pursuant to this Section in a manner that, to the extent reasonably consistent with other provisions of this License, and which allows Licensee to continue to provide Service to its customers, including, but not limited to, expediting approval of any necessary permits required for the relocation of Facilities.
- 4.4.5. If Licensee defaults in its obligations hereunder, the City may remove or relocate the Facilities and charge the reasonable cost thereof to and collect the same from the Licensee.
- 4.5. All Work Performed Safely. Construction and Maintenance shall be done in a workmanlike manner. All work involved in the Construction and Maintenance of the Facilities shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality. The Licensee shall comply with applicable codes and industry standards, as amended from time to time. The Licensee shall employ ordinary care at all times and employ commonly accepted methods and devices for the prevention of failures and accidents that are likely to cause damage, injury, or nuisance to the public. In addition, the Licensee shall, at its sole cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, and to comply with safety requirements of all permits, licenses, and other forms of approval or authorization. Licensee will comply with City requirements for identification of the Facilities and for identification of employees, subcontractors, vehicles and equipment when performing work within the Public Right-of-Way.
- 4.6. Maintenance.
- 4.6.1. Licensee shall maintain the Facilities in good condition and neat and orderly appearance, and in compliance with all Applicable Laws, permits, Authorizations and site licenses.
- 4.6.2. Licensee shall keep the Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. If the City gives Licensee written notice of a failure by Licensee to maintain the Facilities, Licensee shall use its best efforts to remedy such failure within forty-eight (48) hours after receipt of such written notice. If Licensee defaults in its obligations hereunder, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Licensee.

4.6.3. Licensee shall at all times keep and maintain the Facilities free of all graffiti located thereon and shall comply with City Code Section 36-40.

4.7. Emergency Notification. The Licensee shall provide the City with a twenty-four (24) hour emergency telephone number at which a representative of the Licensee, not voice mail or a recording, can be contacted in the event of an emergency. At the City's request, a contact number will also be placed on Licensee's Facilities in such manner as the City may reasonably direct. The Licensee shall respond immediately to address a reported emergency.

4.8. Excavation Notices. Licensee must be a member of an approved notification center pursuant to the Underground Utility Damage Prevention and Safety Act (Miss Utility) and comply with the requirements of 26 Del. C. § 801.

4.9. Inspection by City. The City shall have commercially reasonable access to inspect any work conducted by Licensee during the Construction and Maintenance of Facilities.

5. Removal Due to Termination or Abandonment.

Following the termination of the License for any reason, or in the event Licensee ceases to operate and abandons any Facilities, Licensee shall, within one hundred twenty (120) days, remove such Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to the condition required under City Code Section 42-713(g). Alternatively, the City may allow Licensee, in the City's sole and absolute discretion, to abandon Facilities in place and convey the Facilities to the City free and clear. If Licensee defaults in its obligations hereunder as set forth in Section 7, the City may perform the necessary work and charge the reasonable cost thereof to and collect the same from the Licensee.

6. Required Reports.

6.1. Upon request, the Licensee shall provide City an "as-built" map clearly indicating the location of the Facilities in the Public Rights-of-Way, which maps shall identify the owner of any structure on or within which Licensee's Facilities are located.

6.2. Upon request, and to the extent not expressly required under a permit, Licensee will keep City apprised of the status of any work in the Public Rights-of-Way.

6.3. Upon request, Licensee shall provide any required certificate of public convenience and necessity, and shall provide other proofs that it has authority to construct, maintain and provide Services.

7. Default and Remedies

7.1. Defaults. The following are defaults under this Agreement:

7.1.1. If either party fails to perform or comply with any of the conditions or covenants of this License and such failure continues for a period of thirty (30) calendar days after written notice thereof, unless the performance cannot be reasonably completed within the thirty (30) day period, and the party has commenced good faith efforts to perform and is diligently proceeding to complete performance to the satisfaction of the other party; or

7.1.2. If Licensee fails to pay any sums herein specified when due and does not pay within thirty (30) calendar days after receipt of written notice of said default; or

7.1.3. Licensee's acts or omissions create an imminent hazard to persons or properties which Licensee cannot or does not immediately correct.

7.2. Default by Licensee. In the event of default by Licensee as specified in the preceding section, which default has not been cured in any applicable cure period, the City shall have the right to terminate this License, by giving thirty (30) calendar days written notice to Licensee, and in addition may pursue any other remedies available to it at law or equity. The thirty-day notice period shall not constitute an additional cure period.

7.3. Default by City. In the event of default by the City, Licensee shall have the right to terminate this License while any default continues, beyond any applicable cure period, by giving thirty (30) calendar days written notice to the City, which thirty (30) day period shall not constitute an additional cure period, and in addition may pursue any other remedies available to it for injunctive relief. Licensee shall have no recourse for damages against the City except as required by state law, whether resulting from enforcement or non-enforcement of this License or any provision of Applicable Law.

8. City Termination Right.

City shall have the right to terminate this Agreement (i) if the City is mandated by law, a court order or decision, or the federal or state government to take certain actions that will cause or require the removal of the Facilities from the Public Rights-of-Way; or (ii) if Licensee's Authorizations with respect to the Facilities and/or provide Service are terminated, revoked, expired, or otherwise abandoned; or (iii) if any term related to the design or placement of the Facilities is unenforceable.

9. Indemnification

Before commencing any work, and as a condition of occupancy, Licensee ("Indemnitor") shall execute an indemnity in a form acceptable to the City Solicitor which shall provide that Indemnitor shall be liable for, and the Indemnitor shall indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the "Indemnitees") harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys' fees and disbursements), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of any work associated with the Facilities (including but not limited to installation, operation, relocation, replacement or removal) or permits issued to Indemnitor for work in the Public Rights-of-Way performed by it, or on its behalf, or to cure an act or omission of the Indemnitor or persons acting on its behalf. This indemnity may be included as part of an authorization, and if included, shall be deemed a condition of any work performed in the Public Rights-of-Way. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made as set forth herein; then upon demand by the City, the Indemnitor shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Indemnitor's insurance carrier (if such claim, action or proceeding is covered by insurance) or by the Indemnitor's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation (because, for example, a conflict of interest exists which makes joint representation of the Indemnitee by Indemnitor's counsel inadvisable), such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee

in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Indemnitor shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

10. Insurance and Performance Bond.

10.1. Insurance. Licensee shall procure and maintain insurance for the duration of this License against any and all claims for bodily injury, including death, and for property damage which may be caused, in whole or in part, by the Construction and Maintenance of Facilities or activities Licensee, its agents, representatives or employees may perform pursuant to this License (the "Work"). Such insurance shall be in the following amounts, which assume that no hazardous materials will be associated with any of the Facilities, and that the Facilities will be of a kind and type regularly installed in the Public Rights-of-Way. Once every three (3) years with 60 days' prior written notice to Licensee, the City may require additional insurance if, in the City's reasonable view, the Facilities present additional risks to it, the public or property.

10.2. Coverages and Limits:

- 10.2.1. General Liability per ISO form CG 0001 (or its equivalent) \$1,000,000 per occurrence/ annual aggregate
- 10.2.2. Automobile Liability \$1,000,000 per accident
- 10.2.3. Workers' Compensation Statutory Limits
- 10.2.4. Employer's Liability \$500,000/\$500,000/\$500,000

10.3. Certificates. Certificates showing proof of such insurance shall be submitted to City by e-mail to BSantiago@Wilmingtonde.gov prior to commencement of any work under this license. Further, it shall be an affirmative obligation upon Licensee to advise City, by e-mail to BSantiago@Wilmingtonde.gov and mail to the City's Risk Manager, thirty (30) days prior notice of cancellation, substantial modification below this Agreement's requirements or a non-renewal of any required coverage that is not replaced.

10.4. Endorsements. The General Liability policy is to include City, its officers, officials, and employees as additional insureds as their interest may appear under this Agreement excluding Worker's Compensation and Employer's Liability. City's additional insured status shall (i) be limited to bodily injury, including death, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed Licensee's indemnification obligation under this Agreement, if any. Such coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10.5. Workers' Compensation. Licensee shall maintain Workers' Compensation Insurance for all of Licensee's employees who are in any way connected with the Work. Such insurance shall comply with all applicable state laws and to the extent allowed by law provide a waiver of subrogation against the City, its officers, officials, agents and employees.

- 1.1.1 Licensee and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees. Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII and eligible to do business in the State of Delaware, unless otherwise approved by City; and Licensee shall not self-insure in satisfaction of any of the insurance requirements set out herein without the express written consent of City.

10.6. Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right, subject to prior written approval by City that Licensee's established self-insurance program is commercially reasonable, to self-insure the coverages required in Section 10. Licensee shall provide the City at least (60) days' written notice of its election to self-insure. In the event Licensee elects to self-insure its obligation to include the City as an additional insured, the following provisions shall apply (in addition to those set forth in in Section 10): (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least two hundred million dollars (\$200,000,000.00); (ii) Licensee shall continuously maintain appropriate loss reserves for the amount of its self-insurance obligations under this Section 10, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of Licensor, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to the City; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; (vi) All amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement; and (vii) Licensee shall establish and maintain a commercially reasonable self-insurance program to administer. City may require Licensee to provide proof of its compliance with the foregoing provisions of this subsection.

10.7. Performance Bond or Letter of Credit. Licensee shall, as a material condition of its License Agreement, and prior to the commencement of any Construction and Maintenance, deliver to the City a performance bond or irrevocable letter of credit in the amount of fifty thousand dollars (\$50,000.00), payable to the City to ensure the appropriate and timely performance of Construction and Maintenance and compliance with the obligations of its License. The required performance bond or irrevocable letter of credit must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Delaware, and satisfactory to the City Solicitor in form and substance, and must be maintained until all obligations to City under this License (including obligations to remove) are satisfied.

11. Transfer

11.1. The License, or control of the License or of Facilities within the Public Right-of-Way may not be assigned or transferred directly or indirectly by any means without the prior written consent of City which consent shall not be unreasonably withheld, conditioned or delayed if:

(i) Licensee is in compliance with this Agreement and (ii) the transfer or assignment does not create any additional burden upon the Public Right-of-Way, or materially and adversely affect the City's interests under this Agreement and License. An assignee or transferee must accept all obligations of the Licensee, and responsibility for all acts and omissions of License known and unknown, if the transaction results in a change in Licensee.

11.2. Notwithstanding the foregoing, to allow for internal restructuring, Licensee shall have the right to assign this License and all rights and obligations accorded Licensee to a wholly-owned subsidiary or a parent entity of Licensee (each, a "Permitted Assignee") without the prior written consent of City, provided that the change is not part of a transaction that results in a change of control of the ultimate parent of Licensee as of the Effective Date, or an assignment or assets to an entity that is not under the control and ownership of the entity that is the ultimate parent of Licensee as of the Effective Date. In the event Licensee assigns his License to a Permitted Assignee, Licensee shall provide the City with written notice of such assignment within thirty (30) days of such assignment, and the assignee must, by that date, agree to be bound by this Agreement, to accept responsibility for all acts and omissions of the Licensee known and unknown.

11.3. Licensee may mortgage, pledge, or hypothecate its interest in Facilities without consent to any financing entity, or agent on behalf of any financing entity to whom Licensee (1) has obligations for borrowed money or in respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or similar instruments, or (3) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof. Any such assignment to a financing entity or its agent shall be subordinate to the terms of this License Agreement, will not permit any person to succeed to the rights of Licensee under the License without the City's consent, and will not result in any lien extending to property owned by the City or the License itself.

12. Notices

12.1. All notices, requests, demands, and other communications hereunder which are required to be in writing shall be deemed given if personally delivered or by sent to the following addresses by certified mail, return receipt requested; or by an overnight delivery service providing proof of delivery:

City:

City of Wilmington
Department of Public Works
Louis L. Redding City/Cty Bldg. 6th Floor
800 French Street
Wilmington, DE 19801
Attention: Commissioner

With a copy to:

City of Wilmington Law Department
Louis L. Redding City/Cty Bldg. 9th Floor
800 French Street
Wilmington, DE 19801
Attention: City Solicitor

Licensee:

New Cingular Wireless PCS, LLC
Attention: Tower Asset Group - Lease Administration
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to:
New Cingular Wireless PCS, LLC
Attention: AT&T Legal Department – Network Operations
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
208 S. Akard Street
Dallas, TX 75202-4206

All invoicing to Licensee may be made to the following address:

New Cingular Wireless PCS, LLC
Attention: Tower Asset Group – Lease Administration
Re: Cell Site # _____; Cell Site Name: _____
Fixed Asset No: _____
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

12.2. Other Notices. Licensee shall identify an entity to which notice may be provided by email or telephone call, twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the construction or maintenance of Facilities, or conditions affecting the safety or integrity of the Facilities downed poles or lines, for example), including matters that may require immediate relocation or removal of Facilities. Initially, that notice may be provided to the Network Operations Center at (800)-852-2671.

12.3. Changing Notice. Either party may change the person, address, email or telephone to which notice may be provided by written notice to the other party. Each party must ensure that the other has accurate information as to where notices are to be provided.

13. Miscellaneous

13.1. Materials and Claims. All materials furnished for any work done in the License Area by Licensee shall be at Licensee's sole cost and expense. Licensee agrees to protect the Facilities installed in the Public Rights-of-Way and property of the City, and City, from all claims of contractors, laborers and material men pertaining to such work. Licensee shall promptly pay all contractors and materialmen furnishing labor, materials or services with any respect to any work performed by or on behalf of Licensee in the Public Rights-of-Way and property of the City, so as to minimize the possibility of a lien attaching to the any property of

the City or the Facilities in the Public Rights-of-Way. Should any such lien be made or filed by reason of such work performed by or on behalf of Licensee, Licensee shall cause the same to be discharged and released of record by bond or otherwise within thirty (30) days after written request by City.

13.2. No Advertisement. Licensee shall not place any advertisement or other notice on or about the Facilities which identifies the Licensee in any way (except for emergency notification postings).

13.3. Entire Agreement. This Agreement contains the entire agreement and understanding between the City and Licensee related to the License, and supersedes all prior or contemporaneous proposals, negotiations, agreements and understandings, if any, related to the subject matter hereof.

13.4. Modification. This Agreement shall not be modified or amended except by written instrument executed by the City and Licensee, or its successors, transfers, heirs or assigns.

13.5. Non-Waiver. Failure of City to insist on strict performance of any of the conditions, covenants, terms or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Licensee to City after a breach of this License shall not be deemed a waiver of such breach unless expressly set forth in writing.

13.6. Force Majeure. If either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.

13.7. Choice of Law. This Agreement shall be interpreted and enforced under the laws of the State of Delaware. Any and all suits for any claims or for any breach or dispute arising out of this Agreement shall be brought and maintained in a court of competent jurisdiction in the State of Delaware.

13.8. Change in Law and Severability. If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision. If, as a result of a change in law by statute, rule, ruling or otherwise, the total compensation to the City arising as a result of Licensee's occupation of the Public Rights-of-Way (including attachments on City-owned facilities therein) is materially reduced, the Parties agree to negotiate in good faith to amend this Agreement to ensure that total compensation to the City remains substantially comparable, to the extent permitted under applicable law.

13.9. Construction. This Agreement has been negotiated between the parties and their respective counsel, and the parties agree that no provision shall be construed against the drafter.

13.10. Immunity. This Agreement shall not be deemed to waive the City's statutory or common law immunity.

13.11. Representations.

13.11.1. Each Party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the its respective obligations hereunder and that such obligations shall be binding upon such Party.

13.11.2. Licensee represents that it is validly existing and in good standing under the laws of the State of Delaware, that it is qualified to do business under the laws of the State of Delaware, and that it has the power and authority to own its properties, to carry on its business as now being conducted, to enter into this License and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this License.

IN WITNESS THEREOF, the parties hereby bind themselves legally to the terms and conditions set forth in this Agreement, as evidenced by the signature of their duly authorized representatives.

[Remainder of this page left blank. Signature pages follow.]

NEW CINGULAR WIRELESS PCS, LLC

By: John Green (SEAL)

Title: Area Manager

STATE OF DELAWARE

)

) ss:

COUNTY OF NEW CASTLE

)

On this, the ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged _____ self to be the _____ of _____, and that as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of and in the name of _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Printed Name of Notary:

Commission Expires:

[signatures continue on following page]

CITY OF WILMINGTON

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

On this, the ____ day of _____, 20____, before me, the undersigned officer, personally appeared Kelly A. Williams, who acknowledged herself to be the Commissioner of the Department of Public Works of the City of Wilmington, and that as such Commissioner, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing in the name of the City of Wilmington.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
Printed Name of Notary:
Commission Expires:

Wilmington, Delaware
September 17, 2020

#4860

Sponsor:

**Council
Member
Freel**

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 Department of Public Works shall have the authority, subject to the approval by Council by resolution, to grant such licenses, easements, and rights-of-way as shall be necessary for the construction, installation, maintenance, repair, operation and inspection of utilities; and

WHEREAS, City Code Section 45-1 provides that the Department of Public Works shall provide for the planning, acquisition, purchase, construction, reconstruction, improvement, betterment, extension, operation and maintenance of plants, properties, works, systems or facilities for the collection, treatment and disposal of sewage, waste, garbage and stormwater of the City; and

WHEREAS, the City is the owner of 475 Hay Road, Wilmington, Delaware, being Tax Parcel No. 26-046.00-001 (the "Property"); and

WHEREAS, Holland Mulch Inc. ("Holland") is a company that, inter alia, manufactures and distributes quality mulch; and

WHEREAS, the City desires to have Holland accept and dispose of the City's yard waste; and

WHEREAS, Holland desires to use a portion of the Property (the "License Area") to store yard waste and convert yard waste into mulch; and

WHEREAS, in furtherance thereof, Holland has requested that it be afforded access onto the License Area for the purpose of storing yard waste and converting it into mulch, and the City is willing to grant such access, subject to the terms and conditions of the License Agreement attached hereto and incorporated herein as Exhibit “A”.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the License Agreement between the City of Wilmington and Holland Mulch Inc., 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 the License Agreement, as well as take all additional undertakings related thereto, as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves a five-year license agreement with five one-year renewal options between the City and Holland Mulch Inc. (“Holland”), which permits Holland to use of a portion of 475 Hay Road, Wilmington, Delaware (being Tax Parcel No. 26-046.00-001) to store yard waste and convert it into mulch. In return, Holland will accept and dispose of all of the City’s yard waste at its sole cost and expense, a service which has a monetary value of approximately one hundred twelve thousand, five hundred dollars (\$112,500.00) per year.

W0111711

EXHIBIT A

LICENSE AGREEMENT

(475 Hay Road)

THIS LICENSE AGREEMENT (this "License") is made as of this ____ day of _____, 2020 (the "Effective Date"), by and between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware (the "City"), having an address of 800 North French Street, Wilmington, Delaware 19801, as licensor, and **HOLLAND MULCH INC.** ("Holland"), having an address of 135 Hay Road, Edgemoor, Delaware 19809, as licensee.

RECITALS:

WHEREAS, the City is the owner of that certain parcel of land and the improvements thereon known as 475 Hay Road, Wilmington, Delaware, being Tax Parcel ID 26-046.00-001 (the "Property");

WHEREAS, Holland is a company that, inter alia, manufactures and distributes quality mulch;

WHEREAS, Holland desires to use a portion of the Property, as depicted on Exhibit A attached hereto and incorporated herein (the "License Area"), to: (i) store Yard Waste (as defined herein) and (ii) convert Yard Waste into mulch (collectively, the "Permitted Business Activities"); and

WHEREAS, in furtherance thereof, Holland has requested that it be afforded access onto the License Area for the purpose of performing the Permitted Business Activities, and the City is willing to grant such access, subject to the terms and conditions hereof.

NOW, THEREFORE, intending to be legally bound, the parties hereto agree as follows:

1. Recitals. The above recitals are incorporated herein and made a part hereof.

2. Definitions.

(a) "Alterations" shall mean any alteration, addition, demolition, improvement, grading, replacement, or change to the License Area, which is necessary to perform the Permitted Business Activities, following the completion of the Clearing Work.

(b) "City" has the meaning ascribed to such term in the first paragraph of this License.

(c) "Clearing Work" shall mean (i) clearing the vegetative overgrowth that is located on the License Area as of the Effective Date and (ii) constructing any necessary initial improvements on the License Area in order for Holland to be able to perform the Permitted Business Activities.

(d) "Commencement Date" means the date that is the later of (i) the Effective Date or (ii) the date that the Wilmington City Council approves this License.

- (e) “Effective Date” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (f) “Expiration Date” is defined in Section 4(b) of this License.
- (g) “Event of Default” is defined in Section 14(a) of this License.
- (h) “Holland” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (i) “Law(s)” means all present and future laws, statutes, codes, ordinances, orders, rules, and regulations of all federal, state, and local governments, agencies, and authorities having jurisdiction over the License Area.
- (j) “License” has the meaning ascribed to such term in the first grammatical paragraph of this License.
- (k) “License Area” has the meaning ascribed to such term in the fourth grammatical paragraph of this License.
- (l) “Permitted Business Activities” has the meaning ascribed to such term in the fourth grammatical paragraph of this License.
- (m) “Property” has the meaning ascribed to such term in the second grammatical paragraph of this License.
- (n) “Renewal Terms” is defined in Section 4(b) of this License.
- (o) “Term” is defined in Section 4(a) of this License.
- (p) “Termination Notice” is defined in Section 4(b) of this License.
- (q) “Yard Waste” shall mean plant material resulting from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands and includes grass, leaves, flowers, roots, prunings, brush, shrubs, wood chips, Christmas trees, tree limbs up to four (4) inches in diameter, and debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter. Yard Waste does not include loose soils; plastics and synthetic fibers; construction, renovation, and demolition wastes; clean wood; treated wood; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; noxious weeds; or soil contaminated with hazardous substances.

3. Grant of License. The City hereby grants to Holland a temporary, revocable license in favor of Holland for Holland to utilize the License Area for the purpose of performing the Clearing Work, the Permitted Business Activities, and the Alterations. Holland shall access the License Area through the designated area depicted on Exhibit A to this License. This License is revocable by the City at will, with or without cause, upon ninety (90) days’ advance written notice (or such lesser period as specified herein).

4. Term; Contingency; Renewal.

(a) Subject to the renewal options set forth in Section 4(b) below, the term of this License (as it may be extended, the “Term”) shall commence on the Commencement Date and shall expire on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (unless extended or terminated pursuant to Section 4(b) below or revoked by the City, the “Expiration Date”).

(b) Absent the delivery of a written notice of termination from either party to the other at least thirty (30) days prior to then current Expiration Date (a “Termination Notice”), this License shall automatically renew, on a year to year basis, without any action by either party beyond the initial Expiration Date and each successive Expiration Date thereafter (“Renewal Terms”) as long as (i) Holland continues to use the License Area for the Permitted Business Activities, (ii) the City has not revoked the License, and (iii) an Event of Default has not occurred that remains uncured to the City’s satisfaction. Notwithstanding anything to the contrary in this License, there shall be no more than five (5) Renewal Terms under this License, and this License shall automatically terminate on the last day of the fifth (5th) Renewal Term.

5. Compensation; Acceptance of City’s Yard Waste.

(a) Holland shall not pay any monetary compensation to the City for this License. In lieu of monetary compensation, Holland, at its sole cost and expense, shall accept and convert all of the City’s Yard Waste into mulch starting on the Commencement Date. The parties acknowledge that the aforementioned service has a monetary value of approximately one hundred twelve thousand, five hundred dollars (\$112,500.00) per year.

(b) The City shall deliver the City’s Yard Waste to Holland at the License Area at time periods agreed upon by the parties. Holland shall accept all of the City’s Yard Waste and shall utilize it for the Permitted Business Activities.

6. Permitting. Holland shall, at its sole cost and expense, obtain all approvals, permits, and licenses legally required to perform the Clearing Work, the Permitted Business Activities, and the Alterations.

7. Business License. Holland shall obtain and/or maintain an appropriate business license from the City’s Department of Finance.

8. Taxes. Holland shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City’s wage tax law.

9. Clearing Work and Future Alterations.

(a) Holland shall perform the Clearing Work at its sole cost and expense prior to commencing the Permitted Business Activities.

(b) Holland shall have the right to make Alterations to the License Area at Holland’s sole cost and expense; provided, however, any Alteration shall be subject to the City’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed.

10. Utility Expenses. During the Term of this License, Holland shall pay and discharge all applicable utility charges (including, but not limited to, charges for electric, stormwater, sewer and water) related to the License Area.

11. Maintenance, Repair, and Obligations.

(a) Holland shall, at its sole cost and expense, keep, or cause to be kept, the License Area in good order and repair and shall make all restorations and improvements necessary to maintain the License Area in a good, safe and clean condition, including, but not limited to, (i) cutting and maintaining any grass or landscaping and (ii) collecting and disposing of any trash that accumulates on the License Area.

(b) During the Term of this License, Holland shall, at its own cost and expense, promptly observe and comply with all Laws applicable to the License Area, the Clearing Work, the Permitted Business Activities, and the Alterations.

12. Insurance and Indemnity.

(a) Insurance. Holland, at its sole cost and expense, for the mutual benefit of the City and Holland, shall at all times during this License, provide or confirm the procurement of, workers' compensation, automobile, and commercial general liability insurance coverage for personal injury, sickness, disease or death, or for damage or injury to or destruction of property (including the loss of the use thereof) occurring upon, in, or about the License Area or any improvements erected or constructed thereon, to wit:

(i) Workers' Compensation & Employer's Liability Insurance

(A) Holland and any vendor or independent contractor engaged for work or services on the License Area shall purchase and keep in force and effect workers' compensation insurance affording statutory coverage and containing statutory limits that will provide the applicable statutory benefits for employees of any employer who may or do suffer covered injuries or diseases while involved in the performance of their work at the License Area; and, even if permitted to do so by statute, Holland, independent contractor, or vendor shall not reject any workers' compensation insurance option that, in the absence of such a rejection, would be applicable to any of the said employees.

(B) Holland and any vendor or independent contractor shall purchase, and keep in force and effect, Employers' Liability insurance with maximum limits for each employee of \$1,000,000 for each bodily injury by accident or occupational disease, and \$1,000,000 aggregate maximum limits for all bodily injuries by accidents or occupational diseases within the coverage period, regardless of the number of employees who may sustain bodily injuries by accident or occupational disease.

(ii) Automobile and Commercial General Liability Insurance

(A) Holland and any vendor or independent contractor shall purchase: (1) motor vehicle liability coverage with liability limits for bodily injury of at least \$1,000,000 with a combined single limit, and \$100,000 for property damage for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out

of Holland's, vendor's or independent contractor's performance of work, and (2) comprehensive commercial general liability ("CGL") insurance with limits of no less than \$2,000,000 per each occurrence and \$3,000,000 in the aggregate. The CGL policy shall be extended by endorsement or otherwise to also include (a) coverage for contractual liability assumed by Holland, vendor and/or independent contractor, with defense provided in addition to and separate from policy limits for indemnities of the named insured, (b) coverage for Independent Contractor Liability, (c) coverage for broad form property damage liability, and (d) coverage for personal injury liability. The "City of Wilmington" shall be named as an additional insured on the motor vehicle liability coverages and CGL coverages. The CGL policy shall provide an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the City, its officials or employees.

(iii) General Requirements for all Insurance

(A) All insurance required under this License except workers' compensation and employers' liability shall specifically name the "City of Wilmington", its officials and employees as additional insureds.

(B) Every insurance policy, to the extent obtainable, shall provide written notice of cancellation to the City of such policy.

(C) Each policy shall be written by a carrier licensed by the State of Delaware that has, and maintains during the term of the policy, at least an "A" rating from the A.M. Best Agency with "Stable" outlook. Any change in this rating or outlook must be disclosed to the City by Holland as soon as possible upon learning of the same.

(D) All insurance required under this License, except workers' compensation and employers' liability, shall expressly provide that such insurance shall be primary insurance.

(E) Holland shall procure and retain records including certificates of insurance evidencing the above-stated coverages and other requirements.

(b) Certificates of Insurance. Holland shall deliver to the City certificates of insurance evidencing the existence of all policies of insurance described above. Holland shall be permitted to maintain the coverages required by this License under one or more blanket policies of insurance that also cover other properties owned by Holland.

(c) Indemnity. Holland shall defend, indemnify, and hold the City and its officials and employees harmless from any and all claims, lawsuits, loss, liability, costs or expenses, including reasonable attorneys' fees, arising out of or related to (i) any claim of bodily injury, property damage or other damages occurring within the License Area during the Term of this License or (ii) the activities, improvements, and uses contemplated by this License, including, but not limited to, the Clearing Work, the Permitted Business Activities, the Alterations, and the restoration required by Section 13 below.

(d) Release. The City shall not be liable or responsible for, and Holland hereby releases the City from any and all claims with respect to, any loss, damage or injury to any property or person occasioned by (i) any condition, design, or defect in the Property, (ii) the City's use of the

Property, (ii) the repair or alteration of any part of the Property, or (iii) any other cause whatsoever related to the use of the License Area.

(e) Sections 12(c) and 12(d) shall survive any revocation, termination, or expiration of this License.

13. Restoration. Holland, at its sole cost and expense, shall promptly repair (or replace if appropriate) any damage to the Property resulting from the exercise of the rights granted hereunder, including, without limitation, any damage to landscaping. Holland, at its sole cost and expense, shall remove all Yard Waste, including the City's Yard Waste, upon revocation, termination, or expiration of this License. This Section 13 shall survive any revocation, termination, or expiration of this License.

14. Default Provisions.

(a) The occurrence and continuance of any one or more of the following events shall constitute an "Event of Default" under this License:

(i) If Holland ceases to use the License Area as contemplated in this License;

(ii) If default shall be made in the punctual acceptance of the City's Yard Waste by Holland, and such default shall continue for a period of ten (10) days after Holland's receipt of written notice thereof from the City to Holland; or

(iii) If default shall be made by Holland in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this License and such default shall continue for a period of thirty (30) days after receipt of written notice specifying such default from the City to Holland; or, if it shall not be reasonably possible to cure such default within a period of thirty (30) days, then such longer period reasonably designated by the City in order to allow Holland to promptly remedy such default following Holland's receipt of the default notice.

(b) If an Event of Default has occurred and continues beyond those periods of time herein granted to cure the same, then the City, in addition to any other remedies to which the City may be entitled at law or in equity, shall have the right to terminate this License by giving Holland a notice of termination, whereupon the Holland's rights under this License shall immediately terminate.

(c) THE CITY AND HOLLAND EACH AGREE TO AND THEY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LICENSE, THE RELATIONSHIP OF THE CITY AND HOLLAND, OR HOLLAND'S USE OR OCCUPANCY OF THE LICENSE AREA, AND ANY CLAIM OR INJURY OR DAMAGE AND/OR ANY STATUTORY REMEDY.

15. Relocation of License Area. The City shall have the right and option to cause Holland to relocate its Permitted Business Activities, within ninety (90) days after notice to do so, to another location within the Property, comparable in size and location to the License Area. Within sixty (60) days after any such notice shall be given, the City and Holland shall execute and deliver an

amendment to this License which shall substitute a description of the License Area to which Holland is to be relocated for the description of the License Area contained herein; otherwise all of the terms and conditions of this License shall be applicable to Holland's occupancy of the new License Area.

16. Rules and Regulations. The City shall have the right to promulgate rules and regulations for the use of the License Area during the Term of this License.

17. Construction. This License shall be construed without any presumption that an ambiguous provision is to be interpreted against the party which drafted this License.

18. Assignment and Sublicense. Holland shall not assign this License or otherwise transfer Holland's interest in the License Area or any portion thereof to any person.

19. Condemnation. If at any time during the Term of this License, title to the whole or any portion of the License Area shall be taken by exercise of the right of condemnation, eminent domain or by agreement between City and those authorized to exercise such right (all such proceedings being collectively referred to herein as a "taking"), this License shall terminate and expire on the date of such taking.

20. Notices. Every notice, approval or consent required by this License shall not be effective unless the same shall be in writing and sent postage prepaid, by (a) United States registered or certified mail, return receipt requested, (b) hand delivery, or (c) overnight courier, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this paragraph. Notices shall be deemed given when so sent; but time periods for performance following notice shall run from the date the notice has been delivered or delivery is refused.

21. Governing Law. This License and the performance of all the terms and conditions contained herein shall be governed, interpreted, construed, and regulated by the laws of the State of Delaware. All disputes in connection with this License shall be resolved by the courts of New Castle County, Delaware. The parties agree to submit exclusively to the jurisdiction and venue of said courts.

22. Severability. Any provision of this License that may be determined by competent authority to be illegal, invalid, prohibited, or unenforceable shall be ineffective to the extent of such illegality, invalidity, prohibition, or unenforceability without invalidating the remaining terms and provisions hereof, and any such illegality, invalidity, prohibition, or unenforceability shall not invalidate or render unenforceable any of the remaining terms and provisions hereof.

23. Entire Agreement; Amendments. This License shall constitute the entire agreement between the parties with respect to the subject matter of this License. This License shall not be modified or changed except by a writing executed and delivered by both parties.

24. Counterparts. This License may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

25. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this License shall bind, and inure to the benefit of, Holland and the City and their respective permitted successors and assigns.

26. No Partnership. It is understood and agreed that no party hereto shall be construed or held to be a partner, joint venturer, or associate of the other in the conduct of the other's business, nor shall either party be liable for any debts incurred by the other; but it is understood and agreed that the relationship is and at all times shall remain that of licensor and licensee.

27. Headings; Pronouns. The headings of the sections of this License are for convenience only and have no meaning with respect to this License or the rights or obligations of the parties hereto. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: "person", as used herein, includes an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, or other entity; "hereof", "herein", and "hereunder" and other words of similar import refer to this License as a whole; and "parties" means the City and Holland. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of pronouns or nouns shall include the plural and vice versa.

28. Computation of Time Periods. All periods of time referred to in this License shall include all Saturdays, Sundays, and City, state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday, or holiday when City offices are closed, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or holiday when City offices are closed.

29. Time of the Essence. Time is of the essence in all provisions of this License.

30. No Recordation of License. The City and Holland agree that neither this License nor any memorandum thereof shall be recorded.

[The remainder of the page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this License under seal as of the day and year first above written.

LICENSOR:

CITY OF WILMINGTON

By: _____

Name:

Title:

LICENSEE:

HOLLAND MULCH INC.

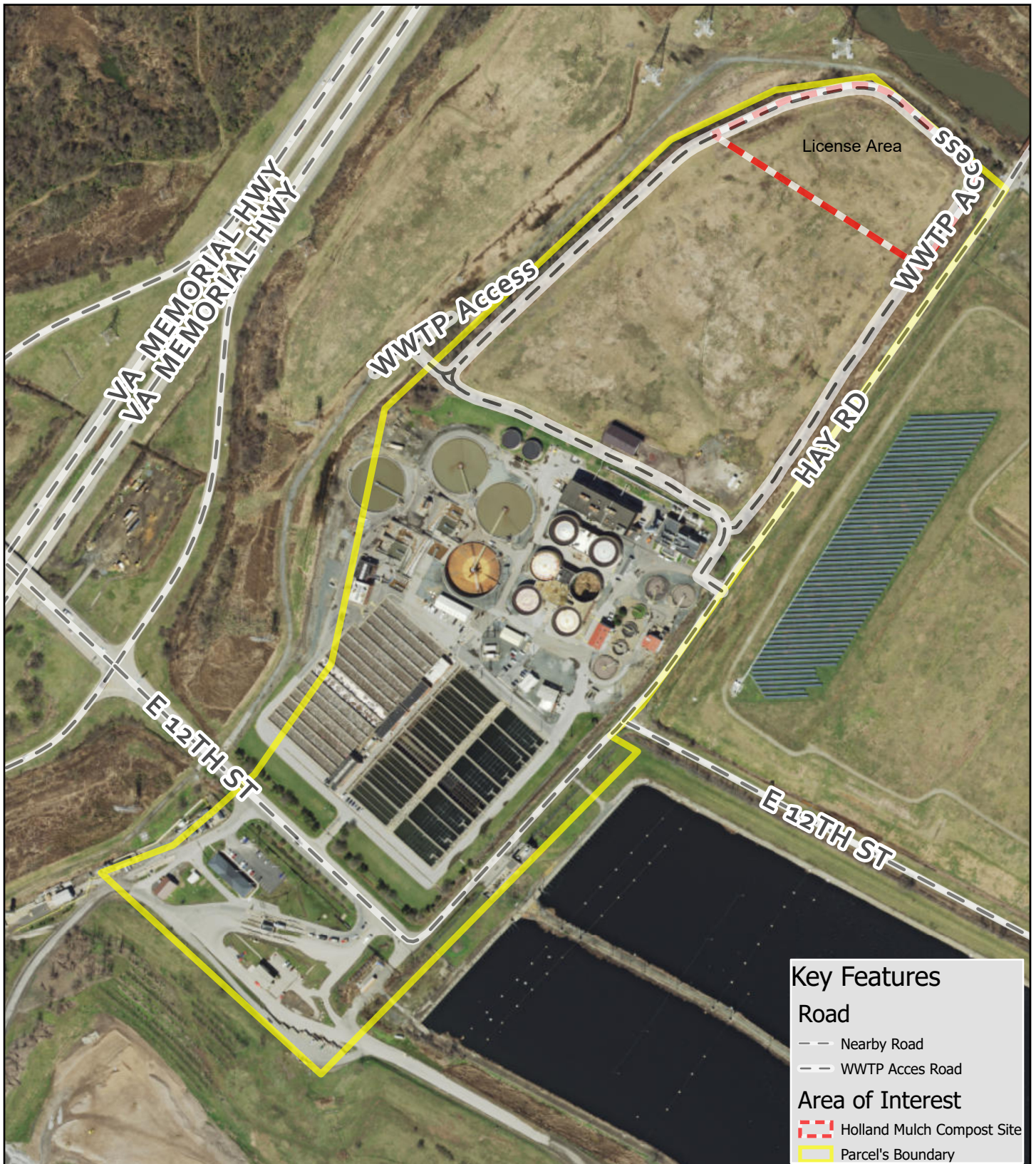
By: _____

Name:

Title:

W0111337

EXHIBIT A
LICENSE AREA



Key Features

Road

- Nearby Road
- WWTP Acces Road

Area of Interest

- Holland Mulch Compost Site
- Parcel's Boundary

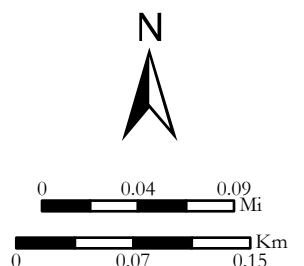


Holland Compost Site

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri

2020

Coordinate System: NAD 1983 StatePlane Delaware FIPS 0700 Feet



**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S
GENERAL OBLIGATION BONDS AND/OR GENERAL OBLIGATION
BOND ANTICIPATION NOTES, IN ONE OR MORE SERIES ON A TAX-
EXEMPT AND/OR TAXABLE BASIS, IN ORDER TO PROVIDE THE
FUNDS TO FINANCE VARIOUS CAPITAL PROJECTS OF THE CITY;
PROVIDING FOR THE SALE OF THE BONDS; AND AUTHORIZING
OTHER NECESSARY ACTION**

#4861 **WHEREAS**, the City presently intends to fund various, duly authorized capital projects specified in the City's capital budgets for its Fiscal Years ending June 30, 2018 and June 30, 2020, as amended and supplemented from time to time (the "Project"); and

Sponsor:

Council Member Freel **WHEREAS**, in order to finance the Project, the City has determined to issue its General Obligation Bonds in an aggregate principal amount not to exceed \$42,000,000 in one or more series on a tax-exempt and/or taxable basis, and/or its General Obligation Bond Anticipation Notes in anticipation thereof; and

Co-Sponsor: **WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the "General Ordinance"), authorizing the City to issue General Obligation Bonds secured by a pledge of the City's full faith, credit and taxing power, for the purpose of, among other things, paying the costs of capital projects of the City; and

Council President Shabazz

WHEREAS, this Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Bonds.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Defined Terms. Terms used in this Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

SECTION 2. Authorization of General Obligation Bonds. The City hereby authorizes the issuance of its General Obligation Bonds in an aggregate principal amount not to exceed \$42,000,000 in one or more series on a tax-exempt and/or taxable basis (the "Bonds"), and/or its General Obligation Bond Anticipation Notes in anticipation thereof (the "BAN") in order to finance the Project. The Bonds shall be issued pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Project, including the costs and expenses associated with issuing and providing for on-going continuing legal compliance of the Bonds. The Bonds and the BAN shall be sold at private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee. It is intended that the BAN will be paid from the proceeds of the Bonds.

The Bonds and the BAN shall be awarded and sold by the Bond Committee to an underwriter or group of underwriters, or to one or more financial institutions (the

“Underwriter” or “Bank”, as appropriate) to be selected by the Bond Committee at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Bond Purchase Agreement or a Note Purchase Agreement to be entered into by the Underwriter/Bank and the City, or (ii) in the case of a competitive sale, in a Bid Form submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the Bid Form which represents the lowest true interest cost to the City. The appropriate officials of the City are hereby authorized to enter into such Bond Purchase Agreement or Note Purchase Agreement and to execute the Bond Purchase Agreement or Note Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds and the BAN shall bear such rate or rates of interest provided that the true interest cost of the Bonds or the BAN does not exceed 6.0%, shall mature in such principal amounts and on such dates, shall be subject to redemption, shall bear such series designation, shall be sold at such price and in such manner, and shall be in such forms and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the “Bond Committee Resolution”). A series designation for any particular series of bonds shall be made in the Bond Committee Resolution corresponding to such series.

SECTION 3. Authorization of Paying Agent’s Agreement. A fiscal agent, paying agent and registrar for the Bonds (the “Paying Agent”) may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the appropriate officials of the City are hereby authorized and directed to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

SECTION 4. Preparation of Preliminary Official Statement. The Bond Committee is authorized and directed to prepare, approve and “deem final” a Preliminary Official Statement and an Official Statement with respect to the Bonds to be used in connection with the public sale of the Bonds. The final Official Statement shall contain the final terms of the Bonds and shall be prepared for use in the public offering and sale of the Bonds.

SECTION 5. Execution of the Bonds and the BAN. The Bonds and the BAN shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the seal of the City, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

SECTION 6. Security for the Bonds and the BAN. The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Bonds and the BAN. The Bonds and the BAN shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy ad valorem taxes upon all taxable property in the City for the payment of the Bonds and the BAN without limitation as to rate or amount.

SECTION 7. Federal Tax Covenants. In the event that part or all of the Bonds or the BAN are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Bonds or the BAN to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”), and all applicable regulations promulgated with respect thereto, throughout the term of the Bonds or the BAN. The City further covenants with the registered owners of the Bonds and the BAN that it will make no investments or other use of the proceeds of the Bonds or the BAN which would cause such Bonds or BAN to be “arbitrage bonds” as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable. In the event the Bonds or the BAN could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Bonds or the BAN pursuant to Section 265 of the Code.

SECTION 8. Official Intent. In accordance with Treasury Reg. § 1.150-2, the City hereby confirms its intentions that a portion of the proceeds of the Bonds or the BAN authorized by this Ordinance, or any other obligations issued by the City, will be used to reimburse itself for qualifying expenditures of the Project paid prior to the date of issuance of the Bonds or the BAN authorized by this Ordinance. All original expenditures to be reimbursed will be capital expenditures (as defined in Treas. Reg. §1.150-1(b)) and other amounts permitted to be reimbursed pursuant to Treas. Reg. §1.150-2(d)(3) and (f).

SECTION 9. Further Action. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

SECTION 10. Inconsistent Provisions. In the event that any provision of the Bonds or the BAN, or any term or condition contained in any agreement relating to the Bonds or the BAN or in this Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Bonds or the BAN, such agreements and this Ordinance shall be controlling with respect to the Bonds or the BAN, such agreements and this Ordinance.

SECTION 11. Relation to General Ordinance. This Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Bonds and the BAN authorized hereunder. This Ordinance shall take effect immediately upon its passage.

SECTION 12. Effective Date. This Ordinance shall be deemed effective as of its date of passage by City Council and approval by the Mayor.

First Reading.....September 17, 2020
Second Reading.....September 17, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the issuance of up to \$42,000,000 aggregate principal amount of General Obligation Bonds (the “Bonds”), and/or General Obligation Bond Anticipation Notes (the “BAN”) in anticipation thereof, in order to: (i) finance any duly authorized capital project of the City specified in the City’s capital budgets for its Fiscal Years ending June 30, 2018 and June 30, 2020; and (ii) pay the costs associated with the issuance of the Bonds and the BAN.

W0111774