

Wilmington, Delaware
December 12, 2019

#4750

Sponsor:

Council
Member
Turner

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

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

WHEREAS, on September 19, 1996, City Council passed a resolution approving a license agreement (the "License Agreement") between the City and AT&T Wireless of Philadelphia, L.L.C. ("AT&T") which permitted AT&T to install and operate communications antennas on and a control cabinet at the base of the City's water tower located on or near 200 Presidential Drive, Greenville, Delaware, sometimes referred to as the Monroe Park Tank; and

WHEREAS, New Cingular Wireless PCS, LLC ("AT&T – NCW") is the successor-in-interest to AT&T with respect to the License Agreement; and

WHEREAS, on August 28, 2008, City Council passed a resolution approving the First Amendment to the License Agreement ("First Amendment") which amended the License Agreement and extended its term until August 8, 2012; and

WHEREAS, on December 5, 2013, City Council passed a resolution approving the Second Amendment to the License Agreement ("Second Amendment") which amended the License Agreement and extended its term until August 8, 2022; and

WHEREAS, the License Agreement, as amended, is set to expire on August 8, 2022; and

WHEREAS, the parties desire to enter a Third Amendment to the License Agreement (a copy of the amendment, in substantial form, is attached hereto as Exhibit "A") to: (1) extend the term of the License Agreement for an additional five (5) years commencing on August 9, 2022; (2) increase the license fee payable by AT&T-NCW to the City under the License Agreement to \$29,028.60 per year commencing on August 9, 2022 with an increase of three percent (3%) annually thereafter; and (3) provide AT&T-NCW with an option to renew the License Agreement for two (2) additional terms of five (5) years after the first five-year extension.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the "Third Amendment to License Agreement" between the City of Wilmington and New Cingular Wireless PCS, LLC, a copy of which, in substantial form, is attached hereto as Exhibit "A", and the Commissioner of Public Works, or her designee, is hereby authorized to execute as many copies of said "Third Amendment to License Agreement" as may be necessary.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution approves the Third Amendment to a License Agreement between the City and New Cingular Wireless PCS, LLC ("AT&T-NCW") which permits AT&T-NCW to install and operate communications antennas on and a control cabinet at the base of the City's water tower located on or near 200 Presidential Drive, Greenville, Delaware, sometimes referred to as the Monroe Park Tank. The Third Amendment will: (1) extend the term of the License Agreement for an additional five (5) years commencing on August 9, 2022; (2) increase the license fee payable by AT&T-NCW to the City under the License Agreement to \$29,028.60 per year commencing on August 9, 2022 with an increase of three percent (3%) annually thereafter; and (3) provide AT&T-NCW with an option to renew the License Agreement for two (2) additional terms of five (5) years after the first five-year extension.

EXHIBIT A

Cell Site No.: 3280
Cell Site Name: Monroe Park
Fixed Asset No.: 10071416
Market: E.PA/SNJ/DE
Address: 200 Presidential Drive, Greenville DE 19807

THIRD AMENDMENT TO LICENSE AGREEMENT

THIS THIRD AMENDMENT TO LICENSE AGREEMENT ("Third Amendment") dated as of the later date below is by and between The City of Wilmington, a municipal corporation, having a mailing address at City of Wilmington Department of Public Works, 800 French Street, 6th Floor, Wilmington DE 19801 (hereinafter referred to as "Licensor") and New Cingular Wireless PCS, LLC, having a mailing address at 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "Licensee").

WHEREAS, Licensor and Licensee (or their predecessors in interest) entered into a License Agreement dated April 21, 1997, as amended by that certain First Amendment to License Agreement dated September 10, 2008, and that certain Second Amendment to License Agreement dated December 17, 2013, (hereinafter, collectively, the "License"), whereby Licensor leased to Licensee certain Premises, therein described, that are a portion of the property located at or near 200 Presidential Drive, Greenville, DE 19807 ("Property"); and

WHEREAS, the term of the License will expire on August 8, 2022 and the parties mutually desire to renew the License, memorialize such renewal period and modify the License in certain other respects, all on the terms and conditions contained herein; and

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

WHEREAS, Licensor and Licensee desire to modify, as set forth herein, the License Fee (as defined below) payable under the License; and

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

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

1. **Term.** The term of the License shall be amended to provide that the License has a new initial term of sixty (60) months ("New Initial Term"), commencing on August 9, 2022 ("New Term Commencement Date"). As of such New Term Commencement Date, all remaining renewal terms in the License except as set forth herein shall be void and of no further force and consequence. The License will be automatically renewed for up to two (2) additional sixty (60) month terms (each an "Extension Term") upon the same terms and conditions of the License, as amended herein, without further action by Licensee, unless Licensee notifies Licensor in writing of Licensee's intention not to renew the License at least sixty (60) days prior to the expiration of the then current Extension Term. Hereafter, the defined term "Term" shall include the New Initial Term and any applicable Extension Term. Licensor agrees and acknowledges that except that as such permitted use or other rights may be amended herein, Licensee may continue to use and exercise its rights under the License as permitted prior to the New Initial Term.

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2. **Modification of License Fee.** Commencing on August 9, 2022, the License Fee payable under the License shall be Two Thousand Four Hundred Nineteen and 05/100 Dollars (\$2,419.05) per month (the "License Fee"), and shall continue during the Term, subject to adjustment, if any, as provided below.

3. **Future License Fee Increase.** The License is amended to provide that commencing on August 9, 2023, License Fee shall increase by Three (3%) percent annually over the License Fee paid during the previous year.

4. **Acknowledgement.** Licensor acknowledges that: 1) this Third Amendment is entered into of the Licensor's free will and volition; 2) Licensor has read and understands this Third Amendment and the **underlying** License and, prior to execution of this Third Amendment, was free to consult with counsel of its choosing regarding Licensor's decision to enter into this Third Amendment and to have counsel review the terms and conditions of this Third Amendment; 3) Licensor has been advised and is informed that should Licensor not enter into this Third Amendment, the underlying License between Licensor and Licensee, including any termination or non-renewal provision therein, would remain in full force and effect.

5. **Notices.** Section 20.3 of the License is hereby deleted in its entirety and replaced with the following:

"NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site # 3280
Cell Site Name Monroe Park (DE); Fixed Asset No.:10071416
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Attn: Network Real Estate Administration
Re: Cell Site # 3280
Cell Site Name Monroe Park (DE); Fixed Asset No.:10071416

Cell Site No.: 3280
Cell Site Name: Monroe Park
Fixed Asset No.: 10071416
Market: E.PA/SNJ/DE
Address: 200 Presidential Drive, Greenville DE 19807

208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Licensor:

City of Wilmington
Department of Public Works
800 French Street, 6th Floor
Wilmington, DE 19801
Attn: Deputy Commissioner

With a copy to:

City of Wilmington
Law Department
800 French Street, 9th Floor
Wilmington, DE 19801
Attn: City Solicitor

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein."

6. **Memorandum of License.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of License substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

7. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the License and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the License otherwise is unmodified and remains in full force and effect. Each reference in the License to itself shall be deemed also to refer to this Third Amendment.

8. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the License.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Cell Site No.: 3280
Cell Site Name: Monroe Park
Fixed Asset No.: 10071416
Market: E.PA/SNJ/DE
Address: 200 Presidential Drive, Greenville DE 19807

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Third Amendment on the date and year below.

LICENSOR:
The City of Wilmington, a municipal corporation

LICENSEE:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: _____

Title: _____

Date: _____

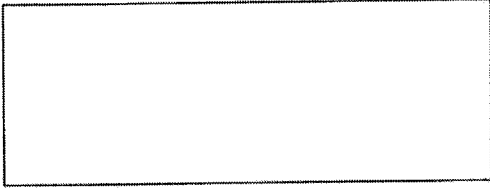
By: _____

Print Name: _____

Title: _____

Date: _____

Cell Site No.: 3280
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(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

Cell Site No.: 3280
Cell Site Name: Monroe Park
Fixed Asset No.: 10071416
Market: E.PA/SNJ/DE
Address: 200 Presidential Drive, Greenville DE 19807

Attachment 1

Memorandum of License

Prepared by:

Jack Corcoran
Smartlink LLC
1000 W 9th Ave
King of Prussia PA 19406

Return to:

Phillips Lytle, LLC
One Canalside
125 Main Street
Buffalo, NY 14203-2887

Re: Cell Site #3280; Cell Site Name: Monroe Park
Fixed Asset Number: 10071416
State: Delaware
County: New Castle

MEMORANDUM OF LICENSE

This Memorandum of License is entered into on this ____ day of _____, 20__, by and between The City of Wilmington, a municipal corporation, having a mailing address of City of Wilmington, Department of Public Works, 800 French Street, 6th Floor, Wilmington, DE 19801 (“**Licensor**”) and New Cingular Wireless PCS, LLC, having a mailing address of 1025 Lenox Blvd NE, Atlanta, GA 30319 (“**Licensee**”).

1. Licensor and Licensee entered into a certain License Agreement (“**License**”) on the 9th day of August, 1997, as amended by that certain First Amendment to License Agreement dated September 10, 2008, that certain Second Amendment to License Agreement dated December 17, 2013, and that certain Third Amendment to License Agreement dated _____, 2019 for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.

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2. The new initial term of the License will be five (5) years (“**Initial Term**”) commencing on August 9, 2022, with Two (2) successive Five (5) year options to renew.
3. The portion of the land being leased to Licensee (the “**Premises**”) is described in **Exhibit 1** annexed hereto.
4. This Memorandum of License is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the License, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of License and the provisions of the License, the provisions of the License shall control. The License shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the License.

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

“LICENSOR”

By: _____
Print Name: _____
Its: _____
Date: _____

“LICENSEE”

New Cingular Wireless PCS, LLC,
By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

Cell Site No.: 3280
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Address: 200 Presidential Drive, Greenville DE 19807

LICENSOR ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
Printed Name: _____
My Commission Expires: _____

LICENSEE ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public
Printed Name: _____
My Commission Expires: _____

Cell Site No.: 3280
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EXHIBIT 1

DESCRIPTION OF PREMISES

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to the Memorandum of License dated _____, 20____, by and between The City of Wilmington a municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware liability company, as Licensee.

The Premises are described and/or depicted as follows:

200 Presidential Drive Greenville DE (insert tax parcel number and/or depiction)