

Wilmington, Delaware
April 15, 2021

#

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF

Sponsor:

THE CITY OF WILMINGTON, that the Master License Agreement for Attachments

**Council
Member
Oliver**

to City of Wilmington Facilities between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware, and **NEW CINGULAR WIRELESS PCS, LLC**, (“New Cingular”) permitting New Cingular to use structures owned by the City of Wilmington and appropriate for the placement in the public rights of way of certain wireless equipment necessary for New Cingular’s operation of its telecommunications network facilities, 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.

Passed by City Council,

Attest: _____
City Clerk

SYNOPSIS: This Resolution approves the Master License Agreement for Attachments to City of Wilmington Facilities (the “MLA”) between the City and New Cingular Wireless PCS, LLC (“New Cingular”) permitting New Cingular to use structures owned by the City of Wilmington and appropriate for the placement in the public rights of way of certain wireless equipment necessary for New Cingular’s operation of its telecommunications network facilities. This equipment is part of New Cingular’s network for the operation of wireless communications services. The initial term of the MLA is ten (10) years and may be renewed for up to two (2) additional five (5) year terms.

FISCAL IMPACT STATEMENT: New Cingular will pay the City an annual rent in the amount of \$270 per year per pole per user. Consistent with the MLA, the rent 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

**MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY OF WILMINGTON-
OWNED FACILITIES**

THIS MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY OF WILMINGTON FACILITIES ("License"), made and entered into this ___ day of _____, 2021, ("Effective Date") by and between the **CITY OF WILMINGTON**, a municipal corporation of the State of Delaware ("City" or "Licensor"), hereinafter referred to as "Licensor", and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (hereinafter referred to as "Licensee"), (collectively referred to as the "Parties").

WITNESSETH

1. DEFINITIONS

Except as expressly provided herein, Capitalized terms shall have the meaning set forth in the *Wilmington City Code* ("Code") and the City's *Regulations for Placement and Maintenance of Wireless Telecommunications Facilities* ("Manual"), and if not defined there, their ordinary meaning.

2. PROPERTY TO BE LICENSED

The Licensor owns certain vertical structures which may be capable of accommodating Licensee's facilities (the "Licensor's Facilities"). Per the terms and conditions as hereinafter set forth, Licensor does hereby agree to license unto Licensee a non-exclusive right to use Licensor's Facilities appropriate for the placement of certain wireless equipment necessary for Licensee's operation of its telecommunications network facilities, including but not limited to fiber optic and coaxial cables, antennas, receivers and transceivers, mounting hardware, power supplies, grounding or bonding wires and other equipment which may be owned by Licensee or Licensee's customers subject to the limitations herein ("Licensee's Equipment"). The right of use is subject to the terms and conditions set forth in this License, and requires the execution of a Schedule A for Licensee's use of any Licensor Facility, which Schedule shall identify specifically the property to be licensed (including any structure that will be used and any real property that will be used), the location of the property, the Licensee's Equipment that will be permitted to be placed at or near the site, the design and location of those facilities, the conditions upon, and the means of access to the Premises as defined below, the compensation for the site license, and any special conditions on the use of the property. It is discretionary with the Licensor to execute a Schedule A, and the Licensor may determine not to grant access to any of its Facilities. Once a Schedule A becomes fully executed, the property licensed to Licensee and identified in a Schedule A shall be hereinafter referred to as the "Premises." Any fully executed Schedule A is made a part hereof for all purposes, including for purposes of renewal as provided in Section 3. Provided further, if a new License is negotiated, any existing Schedule A compliant with then-applicable law shall be included in the new License, provided:

- a. that Licensee's Equipment and Licensor's Facilities comply with, or will immediately be brought into compliance with terms and conditions of the new License; and
- b. the Schedule A is not otherwise terminable under this Agreement.

3. TERM

The License shall be for an initial term of ten (10) years, commencing on the Effective Date and ending on the tenth (10th) anniversary of the Effective Date, provided that, without limiting the other provisions of this License related to termination, the License shall terminate if the ROW License Agreement, or if any material terms of that agreement (or any schedule thereto) or this License are unenforceable. Unless otherwise terminated as specified herein, this License may be renewed for up to two (2) additional five (5) year terms, unless either Party notifies the other Party of its intent to terminate the License at least one

hundred eighty (180) days before the termination of the then current term; or for any particular Premises, if the parties are unable to agree to terms for compensation for continued use. Terms governing the use of, and the conditions under which third parties may own equipment on, the Premises are material. Any reference to "term" herein refers to the initial and any renewal term.

4. AUTHORIZED USE

Licensee shall use the Premises only for purposes authorized under the License Agreement Relating to Wireless Telecommunication Facilities Installed in the Public Rights-of-Way in the City of Wilmington entered into between the Parties with an effective date of October 22, 2020 ("ROW Agreement"). Licensee shall inform Licensor if Licensee needs to abandon or vacate the Premises during the term hereof. In the event that Licensee abandons or vacates the Premises, Licensee's obligation to remit Rent shall terminate on the date that Licensee has removed Licensee's Equipment from the Premises, restored Licensor's Facilities and other property affected by the use of the Licensor's Facilities to its prior condition, as required herein and complied with any special conditions that may apply to any particular Licensor Facility. Licensee agrees not to use the Premises and not to permit them to be used by its employees, agents, contractors or, if applicable, customers who own or lease portions of the Equipment in violation of any applicable law, ordinance, or regulation of any governmental body or authority having jurisdiction thereof.

No hazardous materials may be stored, maintained or used at the Premises without the express permission of the City, and in strict compliance with conditions that may be established in connection with the grant of that permission.

Licensee's use of the Premises is secondary, and shall not prevent use of the Premises for other governmental purposes or interfere with the primary uses of the Licensor's Facilities. If the Licensor determines that it is in its interest to alter the Premises, or to remove Licensor's Facilities to which Licensee's Equipment is attached, Licensor may require Licensee, at Licensee's sole cost and expense, to relocate or otherwise reconfigure Licensee's Equipment on the Premises, or may terminate any respective Schedule A as it relates to a specific Licensor Facility, with not less than one hundred eighty (180) days prior written notice, or sooner if an emergency situation exists. Licensor shall use its best efforts to find a suitable alternative Licensor Facility to which Licensee's Equipment may be attached. In all events, Licensee shall promptly remove Licensee's Equipment at its expense. Licensee is responsible for all activities associated with its use of the Premises, and without limitation shall ensure that those activities are conducted in a manner that does not cause interference with any Licensor communications system, or any public safety communications system associated with the Premises.

Without limitation, Licensee must clearly identify by signage any hazards created by Licensee's Equipment to persons who may access the Premises. Licensor may require Licensee to power down the Equipment as Licensor deems appropriate to permit it or any public agency, or anyone authorized by them, to perform work upon or near the Premises. Except in an emergency, Licensor's authorized field personnel will contact Licensee's designated point of contact with reasonable advance notice, but in no event less than one (1) business day in advance, to inform Licensee of the need for a temporary power-shut-down. Should Licensee fail to power down its Equipment in accordance with this Section, or in an emergency, Licensor may disconnect Licensee's Equipment without notice, but shall notify Licensee as soon as practicable; or if Licensee's designated point of contact is notified in advance, Licensee shall immediately power down the Equipment.

Licensee may not attach to any Licensor Facilities, including those on Schedule A, until it has provided a complete description and cost estimate for the work associated with the use of the Licensor Facilities, including costs and work associated with providing electricity to the Premises; all structures have been certified as safe for use at the location specified (e.g., where a breakaway pole is required, a breakaway pole is proposed; where there is an applicable setback recommendations for road placement, those recommendations are satisfied); and all necessary permits have been obtained.

5. RENT

a. **Base Rents.** The rents for use of Licensor Facilities that are not in rights of way shall be established in the applicable Schedule A, and shall be set by mutual agreement of the Parties. For Licensor's Facilities in the rights of way (primarily street lights and traffic signals) rents shall be charged as provided in this Section. To the extent that Licensor consents to the attachment of any Licensee's Equipment to a Licensor Facility, Licensor shall require rent in the amount of \$270.00 per year per pole per user for each approved small wireless facility. Each additional user after the first is treated as an "additional user," even if installed at the same time as the first. A user is a provider of personal wireless services who provides service via the Facility. 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. Licensor may adjust the fee to any lawful amount, at any time after a final, non-appealable judgment enters in the appeal of FCC's Order *in the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 19-133, WT Docket No. 17-79, 85 FR 51867 (Oct. 15, 2018), or if the FCC modifies that Order, and such judgment or modification permits a fee to be charged that is not based on cost. Initial Deposit for the development of this License and per pole fees are found in Section 7.6 of the Manual.

b. **Rent Adjustments.** Licensor reserves the right to adjust fees annually on July 1 if such adjustment is based on a study of its actual costs, an adjusted fee is a reasonable approximate 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.

The Parties agree that rent shall be adjusted annually on July 1 during the term based on the percentage increase in the annual average CPI-U for the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Region, with the 2019 annual average serving as the reference period, provided such increase shall not be more than 10% of the then-current rental rate.

c. **Costs Caused.** Licensor may charge Licensee for any additional expenses it incurs as a result of Licensee's occupancy of the facility in excess of the annual rent. The costs include, without limitation, additional costs associated with maintenance of the Licensor facilities; inspection costs; repair costs that are attributable to Licensee's facilities; and any training costs or other expenses that may be incurred to ensure that City employees and or City contractors may safely work on or around the facilities.

d. **Time for Payments.** The annual rent due for use of any Licensor Facility shall be paid in accordance with this paragraph. The initial rent payment shall be paid on the earlier of ninety (90) days after the approval of a Schedule A, or the date construction associated with the use of Licensor's Facility begins. For the initial rent payment, Licensee shall pay Licensor the rent owed for the approved facility times a percentage equal to the number of remaining months in the rental year (July 1 – June 30) divided by 12, with partial months treated as whole months. Thereafter, on July 1 of every year, it shall pay Licensor the annual rent owed for the use of Licensor's Facility. If an additional user or small wireless facility is made, as defined under 47 C.F.R. 1.6002(l), from the date of installation, for each user and additional small wireless facility, Licensee shall pay Licensor the rent at a percentage equal to the number of remaining months in the year divided by 12. Thereafter, on July 1 of every year, it shall pay the Licensor the rent owed for the additional users and small wireless facility. If Licensee ceases to use a Licensor Facility, 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 Premises restored in accordance with this License. If an additional use is added, from the date of installation, for each user, Licensee shall pay Licensor rent at a percentage equal to the number of remaining months in the rental year divided by 12. Thereafter, on July 1 of every year, it

shall pay Licensor the rent owed for the additional use. If Licensee ceases to use a Licensor Facility, Licensor will rebate an allocable portion of the rent paid in advance, based upon the date all of the Licensee's Facilities are removed, and the Premises is restored in accordance with this Agreement and as required under City Code Section 42-713(g). For costs incurred under subsection (b), the costs will be paid within sixty (60) days of submission of an invoice of such costs.

e. No Accord or Satisfaction. The acceptance of any rent shall not be treated as an accord or satisfaction. Licensor may audit applicable books and records, and inspect facilities as necessary to ensure rents owed are being paid.

6. TAXES

- a. During the term of this License, Licensee shall pay the taxing authorities directly for payment of all taxes and assessments of any type which may become due and payable for the Premises related to the Equipment or the use of the Premises by the Equipment.
- b. Licensee shall, during the term of this License pay the taxing authorities directly, as the same shall become due and payable, all sales tax, personal property tax, occupancy tax or use tax, and business license fees, if any, imposed by federal, state or local law, upon any and all property or improvements installed on the Premises by Licensee for use in Licensee's business, or upon inventory stored on the Premises by Licensee.
- c. Neither the rents nor the taxes described in Sections 5 or 6(a)-(b) are in lieu of any other taxes that Licensee may owe to Licensor or the State.
- d. For any tax amount for which Licensee is responsible under this License, Licensee shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction. Any tax-related notices shall be sent to Licensee in the manner set forth in Section 20. Promptly after the Effective Date of this License, Licensor shall provide the Licensee's notice address to the taxing authority for the authority's use in the event the authority needs to communicate with Licensee. In the event that Licensee's tax address changes by notice to Licensor, Licensor shall be required to provide Licensee's new tax address to the taxing authority or authorities.

7. INDEMNITY

Notwithstanding anything herein to the contrary, Licensee shall indemnify and hold the Licensor, its employees, officers, officials, and representatives, free and harmless from and against any and all liabilities, losses, claims, demands, suits, judgments, causes of action and/or expenses of any kind or nature, including the payment of reasonable attorneys' fees, resulting from property damage and/or personal injury, including death, resulting from or in any way arising out of Licensee's use of the Premises, except to the extent arising out of the gross negligence or willful misconduct of the Licensor. The foregoing indemnity shall survive the expiration or termination of this License.

All property kept, stored, or maintained in or on the Premises shall be kept, stored, or maintained at Licensee's sole risk and expense, and Licensee agrees to pay and discharge any and all mechanic's, materialman's or other liens against the Premises arising from Licensee's use thereof.

8. INSURANCE

8.1 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.

8.2 Coverages and Limits:

- 8.2.1 Commercial General Liability per ISO form CG 0001 (or its equivalent) \$1,000,000 per occurrence/ annual aggregate
- 8.2.2 Automobile Liability \$1,000,000 per accident
- 8.2.3 Workers' Compensation Statutory Limits
- 8.2.4 Employer's Liability \$500,000/\$500,000/\$500,000

8.3 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 or a non-renewal of any required coverage that is not replaced.

8.4 Endorsements. The City, its officers, officials, and employees are to be included as additional insureds by endorsement 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.

8.5 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.

8.5.1 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.

8.6 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 8. 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 8): (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 8, 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.

8.7 Licensee shall cause each of its contractor's performing services hereunder, if any, to purchase and maintain insurance of the type specified herein, unless Licensee's insurance provides coverage on behalf of each contractor.

9. ALTERATIONS TO PREMISES

Except for maintenance and repairs of Licensee's Equipment which do not alter the physical characteristics of Licensee's Equipment or the Premises size, configuration, appearance, height, weight or structural loading, Licensee shall not make any changes, alterations, or additions to the Premises without the express, written consent of the Licensor. Subject to the provisions herein, Licensee may make like-kind exchanges and replacements that do not increase the size, configuration, appearance, height, weight or structural loading without the Licensor's consent. Any and all permitted changes, alterations, or additions to the Premises made by Licensee shall be at Licensee's sole cost, risk, and expense. However, upon the termination of this License, any and all such improvements, excluding Licensee's Equipment, shall automatically become the property of Licensor, without compensation necessary therefor. Licensee shall restore the Premises to their prior condition. Prior condition, when used with reference to the Licensor's Facilities means, where Licensee's Facilities were placed on an existing pole without replacing that pole, means prior condition, reasonable wear and tear excepted with surfaces repainted so that they are uniform, all signage installed removed, and all markings, holes, wiring, removed or repaired and appropriately sealed and protected to protect the integrity of Licensor's Facilities. Prior condition, when used with respect to the surrounding premises, requires restoration to prior conditions under, above and on the surface, or to such other conditions as the Licensor may direct to in light of changes to the Premises and surrounding area during the License term (for example, if a concrete sidewalk was replaced with brick, restoration of damage to the brick will be repaired with brick). Where the Licensor's Facilities or their foundation was replaced, restoration shall be as provided in Section 21.H.

10. REPAIR AND CARE OF LICENSED PREMISES

Licensee shall not commit any waste of the Premises and shall promptly pay for any and all damages to the Premises to the extent caused by Licensee, its employees, agents, or contractors. Licensee shall not use or permit the use of the Premises by Licensee, its employees, agents, or contractors in violation of any present or future law of the United States or the State of Delaware or in violation of any present or future Licensor or municipal ordinance or regulation. Licensee shall promptly give Licensor notice of any accident or damage to the Premises.

Licensee shall be responsible for all maintenance of the Licensee's Equipment on the Premises, which shall be maintained in good order, and shall comply with the conditions in any approval granted for the Premises, including timely removal of graffiti from Licensee's Equipment. This requires, without limitation, that Licensee comply with City Code Section 36-40, ensuring wiring is properly attached and neatly installed, and ensuring equipment cabinets are locked and sealed. Licensee shall not interfere with, or conduct activities on the Premises that prevent, Licensor from otherwise maintaining the Premises. Licensor owes no duty to repair or maintain to Licensee. The foregoing notwithstanding, Licensor reserves the right to take immediate steps to remove and/or otherwise mask graffiti. Such action does not relieve the Licensee from its obligation to maintain the Premises as stated herein.

11. UTILITIES

Licensee shall pay all charges for utilities it uses on the Premises through direct billing from the utility. Utility equipment and facilities must be installed in a manner acceptable to the Licensor, to the extent not specifically shown in Schedule A. Failure to comply with this requirement may result in non-renewal or termination of the applicable Schedule A. Notwithstanding the foregoing, Licensor may permit Licensee to utilize Licensor's existing electrical services, except where impermissible under applicable tariffs provided the Parties agree to the manner of calculation and payment for Licensee's energy utilization. Either party may terminate such an arrangement, provided that (except in cases where continued provision would violate applicable tariffs, in which case termination may be immediate) at least sixty (60) days written notice is provided to permit installation of any required meter, however, Licensee may extend such period, as reasonably agreed to by the parties, if Licensee is unable to obtain separate utilities within such period. The formation of any such arrangement shall not release Licensee of its obligation to pay for all utilities associated with its use of the Premises.

12. REMOVAL OF IMPROVEMENTS

All furnishings, trade fixtures, equipment and other personal property installed in or on the Premises by Licensee shall remain the property of Licensee and may be removed by Licensee at any time, subject to Section 8 of this License.

13. ASSIGNING AND SUBLETTING

Without the written consent of the other party, neither party may assign, sub-license, or transfer in any manner, in whole or in part, its rights, duties or obligations under this License. A change in control of Licensee or its parent shall be considered a transfer. Such consent shall not be unreasonably withheld, conditioned, or delayed by Licensor. 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 without the prior written consent of Licensor, provided that the change is not part of a transaction that results in a change of control or an assignment of 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 this License to a subsidiary or parent entity, Licensee shall provide Licensor with prior written notice of such assignment, and such entity must agree to be bound by this License, become the Licensee, and to accept liability for all acts and omissions of the prior

Licensee. Further, notwithstanding the foregoing, any entity to which the Licensee may assign, sub-license, or transfer any of its rights, duties or obligations to under this License, shall have all required approvals from all applicable Federal, State and local entities.

Neither this License nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto. Notwithstanding the foregoing, any transfer of the rights granted hereunder, in whole or in part, from Licensee by merger, consolidation, liquidation or otherwise by operation of law, shall constitute an unapproved assignment or subletting, hereunder, and this License shall immediately terminate therewith, without any further action necessary on Licensor's part, and without any refund or proration of rent. The ordinary use of capacity or services on Licensee's network is not a transfer, provided that allowing any person to place equipment at the Premises is a transfer, subject to the following paragraph. Licensor shall be deemed to have consented to placement of property owned by Licensee's customers and placed wholly within facilities owned by Licensor, provided that (a) the third party use complies with the conditions of the ROW Agreement, Section 2.2.3; (b) the third party agrees that it shall be jointly and severally liable for any damage caused by use of the Premises for which Licensee would be liable; (c) that Licensor is only obligated to Licensee as provided in this License, and not such third party, and Licensor owes no duty to such third party, including any duty of care with respect to such third party's property; and (d) that any third party property may be treated as the property of Licensee for all purposes under this License.

14. SURRENDER OF LICENSED PREMISES

Licensee shall surrender the Premises within sixty (60) days after the expiration or earlier termination of the applicable Schedule A, or any extension thereof, or of any other holdover tenancy, in as good a condition as when the Premises were delivered to Licensee, normal wear and tear excepted.

15. HOLDOVER

Should Licensee holdover the Premises, or any part thereof, after the removal period following expiration of any then current term of this License, then such holding over shall constitute a tenancy from day to day, only, and Licensee shall pay the rent owed, plus an additional 50% of the then existing rent until such time as all of Licensee's Equipment is removed from the Premises.

16. TERMINATION

16.1 During the term of this License, Licensee may terminate any respective Schedule A by giving Licensor one hundred eighty (180) days written notice of the intent to terminate. Should a material breach or violation of any provision of this License occur, either party may terminate any individual Schedule A issued hereunder pertaining to the breach, where such breach continues for a period of more than thirty (30) days after receipt of written notice from the other Party of such breach identified, 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.

16.2 In addition to other rights Licensor may have to terminate under the provisions of this Agreement, Licensor may terminate if Licensee engages in a pattern of acts or omissions that create a hazard to persons or properties or fails to comply with all federal, state and local laws, orders, rules and/or regulations and Licensee has failed to discontinue, cure or remediate such hazard or violation of laws, orders, rules and/or regulations within thirty (30) days of written notice from Licensor. Licensor shall not be required to provide more than one (1) written notice to Licensee of the existence of any specified hazard. Licensor may terminate a Schedule A if Licensee takes any action that impairs the ability of the Licensor or any utility or government agency to provide services (including but not limited to safe or adequate street lighting or traffic signalization), and Licensee fails to cure or remediate such impairment within thirty (30) days of written notice from Licensor.

16.3 Without limiting other provisions of this License, during any cure or remediation period, Licensee may be required to cease operations at the applicable Premises, except for such testing as may be coordinated with Licensor, and necessary to effectuate the cure or remediation, and to take such other steps as City finds necessary so that the impairment is immediately ended, and any hazards mitigated.

17. WAIVER OF COVENANTS

The waiver by Licensor or Licensee of a breach of this License shall not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this License will be construed to be a waiver of the breach.

18. ACTS OF GOD AND UNAVOIDABLE INTERRUPTIONS

Neither Licensor nor Licensee shall be liable for failure to perform any obligation hereunder, or for any delay in doing so, when such failure or delay is caused by strike, lockout, governmental restriction, material or labor shortage, acts of God, or any other similar cause beyond the control of the parties hereto, only to the extent and for the period that such interruption continues, save and except that the provisions of this Section shall not excuse a nonpayment of rental or other sums due hereunder on the due date thereof.

19. ACCESS TO PREMISES

Licensee may access the Premises and Licensee's Equipment at all reasonable times, without notice to Licensor except as otherwise specified in a Schedule A. Licensor or Licensor's agents shall have the right to access the Premises at all times; and to access Licensee's Equipment at all reasonable times for the purpose of inspecting or examining Licensee's Equipment, or as necessary to make such repairs to the Premises as Licensor shall deem necessary or required hereunder. In accordance with Section 4, Licensor may require Licensee to shut down its equipment if Licensor accesses the Premises, or when it accesses Licensee's Equipment by contacting 1-800-638-2822 and the Equipment shall be powered down accordingly; should Licensee fail to power down its Equipment, or in an emergency, Licensor may disconnect Licensee's Equipment without notice, but shall notify Licensee as soon as practicable.

Licensee may not access the Premises in a manner that interferes with Licensor's use of the Premises, and must obtain all permits that may be required in connection with work on the Premises, including, by way of example and if required for the work, building or electrical permits.

20. NOTICES

All notices required hereunder shall be in writing and shall be deemed to have been duly given upon receipt if mailed by certified or registered mail, postage prepaid or by a nationally recognized overnight courier, addressed to the party to whom intended at the address provided below or at such other address as such party shall hereinafter designate to the other party in writing as prescribed by this Section 20. Receipt shall be deemed to have occurred upon mailing if a party (a) fails to maintain accurate contact information; or (b) takes action that prevents receipt.

LICENSOR: 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
Attn: TAG-LA
Re: FA# _____
Site ID: _____ (DE)
1025 Lenox Park Boulevard NE, 3rd Floor
Atlanta, GA 30319

With a copy to:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department – Network Operations
Re: FA# _____
Site ID#: _____ (DE)
208 S. Akard Street
Dallas, TX 75202-4206

21. RIGHTS OF SUCCESSORS AND ASSIGNS

The rights and obligations herein shall inure to and be binding upon the parties hereto, their successors and assigns.

22. SPECIAL RULES APPLICABLE TO STREET LIGHTS AND TRAFFIC SIGNALS

The provisions of this Section are in addition to, and not a replacement for, the other provisions of this License, and apply whenever Licensee seeks to attach to a Public Street Light (as defined below).

A. Definitions.

1) “Luminaire” means the luminaire, the supporting arm, and the electrical wires and controls for the luminaire.

2) “Public Traffic Signal” means a structure primarily designed for actively controlling or monitoring vehicular traffic flow on a right of way, including the supporting pole, traffic signals, arms, control equipment and equipment cabinets on site and electric power wire, and associated equipment required to serve the structure from the point of service by the electric utility serving the Public Traffic Signal, including any conduit, foundations, internal dividers, hand holes, vaults, pedestals, and bases. Traffic signs and their supporting posts are not Public Traffic Signals. This term does not include (i) traffic signals attached to a utility pole, building, or similar structure, or (ii) any facility that is privately owned.

3) “Public Street Light(s)” means a structure primarily designed for lighting a public right-of-way or other property owned or controlled by Licensor, including the supporting pole, Luminaire,

arms, electric power wire, and associated equipment required to serve the structure from the point of service by the electric utility serving the Public Street Light, including any conduit, foundations, internal dividers, hand holes, vaults, pedestals, and bases. A Public Street Light does not include (i) a lighting system attached to a utility pole, traffic signal pole, building, or similar structure, or (ii) any facility that is privately owned.

B. Public Traffic Signal and Public Street Light Poles Available For Use.

1) Public Traffic Signal and Public Street Light Poles that the Licensor agrees may be used by Licensee must be under the ownership of Licensor, or transferred to the ownership of the Licensor prior to use by Licensee. Licensee shall be responsible for all costs actually incurred by the Licensor in connection with the replacement of Public Traffic Signals or Street Lights, or the installation of Licensee's Equipment on existing Public Traffic Signals or Street Lights, including but not limited to costs to the Licensor for equipment to monitor or control the Public Traffic Signals or Street Lights as replaced or modified. Licensee is also required to bear all costs of any necessary relocation or modification of facilities owned by entities other than the Licensor and authorized and in place on the Public Traffic Signals or Public Street Lights prior to Licensor's use of the Public Traffic Signals or Public Street Lights.

2) Licensee will be responsible for all costs associated with the installing, replacing and relocating any Public Traffic Signals and Public Street Light it uses under this License in accordance with the Regulations where the installation, replacement or relocation is caused by Licensee, and in other cases, to the extent that costs to City are in excess of costs that City would normally incur in connection with the installation, replacement or relocation. By way of example, and not limitation, if a street is widened and a Public Street Light used by Licensee must be moved, City would pay the costs it incurs for moving its standard Public Street Lights and Licensee would pay all additional costs (including costs associated with removing and installing foundations). City shall maintain the Public Traffic Signals and/or Public Street Lights. Notwithstanding the foregoing, Licensee shall be responsible for any maintenance costs incurred by the City if the height of the Public Traffic Signals and/or Public Street Lights exceeds 48 feet as the City is required to hire a contractor or rent equipment in order to perform the maintenance work above that height. Additionally, if maintenance is required in close proximity to Licensee's Equipment or RF emissions, City's authorized field personnel will contact Licensee's designated point of contact by telephone with reasonable advance notice, but in no event less than one (1) day in advance, to inform Licensee of the need for a temporary power shut-down. In the event of an emergency, the power-down will be performed with such advance notice as practicable. Once the maintenance has been completed and the City worker(s) have departed the exposure area, City shall notify Licensee and Licensee shall restore the power and operation of Licensee's Equipment.

3) Licensee will be responsible for paying all utility charges for electricity, telephone service or any other utility used or consumed by Licensee on the Premises directly to the supplier. Licensor will be responsible for the monthly electrical costs associated with the Luminaire, and any other facilities it may install that use power; *except that*, if the costs to the Licensor are higher because of the replacement or use of the Public Street Light by Licensee, Licensee will pay those additional costs. Licensor will also be responsible for any costs associated with replacing the Luminaire or installing additional facilities for its own use after the installation of Licensee's Equipment and installation of any replacement pole. In addition to other termination rights provided in this License, Licensor may refuse to allow replacement or use of a Public Street Light or terminate use of any or all of the Public Street Lights if Licensor determines permitting use or replacement of Public Street

Lights would (i) alter the tariff under which it is able to purchase electric service; (ii) create unsafe conditions or (iii) otherwise increase the costs of providing Public Street Lighting.

C. Location and Design of Wireless Facilities on Public Traffic Signals or Public Street Lights.

1) The Licensor must specifically approve the design of any of Licensee's Equipment attached to a Public Traffic Signal or Public Street Light, and the design of any replacement Public Traffic Signal or Public Street Light. Licensor may designate the Luminaire to be installed as part of the replacement at any time prior to construction of the replacement Public Traffic Signal or Public Street Light. The Licensor is under no obligation to approve use of additional Public Street Lights or Traffic Signals with designs approved for any particular location, as the approvals with the design shown is site-specific; nor is it under any obligation to approve a modification to any design.

2) The Licensor's approval is not in lieu of required permits or other authorizations required by the Licensor Code's or Regulations, state law, or federal law.

D. Emergency Response Plan and Costs. Prior to performing any work on any Public Street Light or Public Traffic Signal (including but not limited to the initial installation of Licensee's Equipment), Licensee must have a Licensor-approved emergency response plan that identifies Licensor-approved contractors who will respond in the event of an emergency involving Public Street Lights or Public Traffic Signals that are being used by Licensee. The response plan must include (i) adequate response times and (ii) contact information for emergencies twenty-four hours a day and seven days a week. Without limiting the other provisions of this License, Licensee must pay all costs associated with emergency responses to hazards involving the Public Street Lights or Public Traffic Signals it uses, including any cost incurred by the Licensor in emergency responses involving the Licensee's Equipment. In addition, to the extent not addressed by the foregoing, there must be an approved plan, acceptable to the Licensor, for the inspection and maintenance of the Public Street Lights or Public Traffic Signals that are being used by Licensee.

E. Inventory. Licensee shall provide the Licensor with the manufacturer and specifications for all Public Street Lights and Public Traffic Signals it installs. The Licensor or its contractor will endeavor to have reasonable access to replacement Public Street Lights and Public Traffic Signs of the same design, size and color as those installed by Licensee so that a replacement Public Street Light or Public Traffic Signal may be promptly replaced with one of the same design. Licensee shall pay Licensor's costs, if any, for maintaining access to, and an inventory of Public Street Light and Public Traffic Signals for each design used, in addition to costs chargeable under Section 22.B. If a replacement structure is not in inventory, or cannot be promptly provided, Licensor may install a facility of its choice, without regard to whether it can accommodate Licensee's facilities, and charge Licensee the cost thereof.

F. Street Lighting, Traffic Signals, and Other Government Purposes Paramount. The main purpose of the Public Street Lights, including the replacement Public Street Lights, is to provide effective, efficient, safe street lighting, consistent with the plan for the Licensor and the main purpose of Public Traffic Signals is to provide for the safe and effective control and monitoring of traffic. If the Licensor determines that it is in its interest to alter the Public Street Lights or Public Traffic Signals, or to remove Licensor's Facilities to which Licensee's Equipment is attached, Licensor may require Licensee, at Licensee's sole cost and expense, to relocate or otherwise reconfigure Licensee's Equipment on the Public Street Light or Public Traffic Signal, or may terminate any respective Schedule A as it relates to a specific Licensor Facility, with not less than One Hundred Eighty (180) days prior written notice, or sooner if an emergency situation exists. Licensor shall use its best efforts to find a suitable alternative Licensor Facility to which Licensee's Equipment may be attached. In all events, Licensee shall promptly remove Licensee's Equipment at its expense. Licensee is responsible for all activities associated with its use of the Premises, and without limitation shall ensure that those activities are

conducted in a manner that does not cause interference with any of Licensor's use associated with the Public Street Light or Public Traffic Signal.

G. Disconnect. Unless inconsistent with the other requirements of this License, Licensee shall install a Disconnect device at each Public Street Light or Public Traffic Signal on which or within which it installs Licensee's Equipment so that in case of emergency, the Licensor may disconnect such Equipment from its power source and safely shut it down in an emergency.

H. Replacement Public Street Light Removal. At Licensor's option, upon abandonment of Licensee's Equipment on a Public Street Light or termination or expiration of a Schedule A and/or this License, Licensee shall, in addition to taking such other actions as may be required by this License, bear all costs associated with removing the Licensee's Equipment, including any underground Equipment, removing the replacement Public Street Lights to ground level at the applicable site(s), and repairing any portion of the sidewalk damaged by the removal of said Equipment and Public Street Light.

I. Financial Security.

In order to secure the performance of its obligations under this License, Licensee will provide to the Licensor, in the form of a bond or an irrevocable Letter of Credit with a bank licensed to do business in the State of Delaware and acceptable to the City Solicitor in the amount of \$5,000.00 per Public Street Light or \$20,000 per Public Traffic Signal occupied ("the Financial Security") up to a total of \$100,000 for all Facilities.

- 1) If Licensee defaults after all applicable notice and cure periods, Licensor may draw upon the Financial Security including the full amount of any compensation, or costs it may incur, plus costs and reasonable attorneys' fees up to the full amount of the Financial Security.
- 2) Licensee must restore the Financial Security to its full amount within thirty (30) days after written notice from the Licensor that any amount has been recovered from the Financial Security.
- 3) Failure to maintain the Financial Security or to restore the Financial Security to its full amount within thirty (30) days will constitute a material breach of this License. Licensee will be relieved of the foregoing requirement to replenish the Financial Security during the pendency of an appeal from the Licensor's decision to draw on the Financial Security.
- 4) The rights reserved by the Licensor with respect to the Financial Security are in addition to all other rights and remedies the Licensor may have under this License, or otherwise.

23. AS IS CONDITION

Licensor Facilities licensed to Licensee pursuant to this License are licensed to and accepted by Licensee "as is" and with all faults. The Licensor makes no representation or warranty of any kind as to the present or future condition of or suitability of the Licensor Facilities for Licensee's use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of the Licensor Facilities and their merchantability or fitness for a particular purpose. Licensee is solely responsible for investigation and determination of the condition and suitability of any Licensor Facilities.

24. REPORT DAMAGE AND REIMBURSEMENT TO LICENSOR

Licensee, its personnel, agents and contractors shall exercise reasonable caution to avoid damaging the facilities and property (including the rights of way) of Licensor and shall make an immediate report to Licensor of the occurrence of any such damage caused by its personnel, agents, or contractors. Licensee

agrees to reimburse Licensor for all reasonable costs incurred by Licensor for repair of such facilities and property damaged by Licensee, its personnel, agents, and contractors.

25. RISK OF LOSS OF EQUIPMENT

Licensee bears all risks of loss or damage of the Licensee's Equipment from any cause, and the Licensor shall not be liable for any damages or loss associated with loss or damage of the Licensee's Equipment, including, without limitation, damage caused by the Licensor's removal of the same.

26. AS-BUILT DRAWINGS

Upon the completion of each installation, Licensee must promptly furnish to the Licensor an "as-built" map that identifies the exact location of the Premises and the location of all facilities associated with the Licensee's Equipment. The information must be provided in a format that is compatible with Licensor's GIS system. It must also provide as-built drawings showing all the components of the Licensee's Equipment as constructed.

27. NO PROPERTY INTEREST CONVEYED; NO INTERFERENCE

Nothing in this License may be deemed to grant, convey, create, or vest in Licensee a real property interest in land or any structure, including any fee, leasehold interest, or easement. No reference herein to a right of way or to Licensor Facilities shall be deemed to be a representation or warranty by Licensor that its interest is sufficient to permit its use for Licensee's purposes, and Licensee shall be deemed to gain only those rights to use as are proper in Licensor, and as Licensor may have the undisputed right and power to give. Licensee's use may not interfere with any public uses of any public property. If such interference should occur, Licensee shall immediately take steps to resolve such interference.

28. CONTINUED OBLIGATIONS

Licensee's obligations to indemnify, to maintain insurance, to maintain the Financial Security, and to take any action required upon termination or abandonment shall survive termination until all obligations are satisfied.

29. ENTIRE AGREEMENT

This License constitutes the entire agreement between the Parties hereto, and the Parties hereto agree that neither Licensor nor Licensor's agents or representatives have made any other promises or representations to Licensee regarding the Premises or the rights granted herein. This License may not be modified or amended except in writing signed by both Parties hereto. The material terms of this License are not severable.

30. GOVERNING LAW

This License shall be governed by, construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of laws principles.

31. IMMUNITY

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

32. CHANGE OF LAW

Upon written request of either Party, this Agreement shall be renegotiated in good faith at any time with respect to specific terms that are materially affected upon any final, non-appealable change in federal or state laws or orders that materially affect any rights or obligations of either Party under this Agreement. All terms in the existing Agreement shall remain in effect while the Parties are negotiating.

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as of the day and year first above written.

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

CITY OF WILMINGTON

By: _____
Kelly A. Williams, Commissioner
Department of Public Works

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:

[signatures continue on following page]

[signatures continued from previous page]

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

By: AT&T Mobility Corporation
Its: Manager

By: _____(SEAL)
Name: John Green
Title: Area Manager
Date: _____

STATE OF PENNSYLVANIA)
) ss:
COUNTY OF MONTGOMERY)

On this, the ____ day of _____, 20__, before me, the undersigned officer, personally appeared John Green, who acknowledged himself to be the Area Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, and that as such Area Manager, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of and in the name of New Cingular Wireless PCS, LLC .

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

Notary Public
Printed Name of Notary:
Commission Expires:

[Schedules are for illustrative purposes only; City may change at any time]
Form of Schedule A

Pursuant to the Master License Agreement for Attachments to City of Wilmington-Owned Facilities ("Agreement"), between the City of Wilmington, a municipal corporation of the State of Delaware ("Licensor"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with offices located at 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, GA 30319 ("Licensee").

1. Site Address: (street address if known)
2. Site Latitude and Longitude:
3. Commencement Date:
4. Monthly Rent:
5. Term: See Paragraph 3 of the Agreement.
6. Site Licensor-Owned: _____ or Licensor-Licensed: _____,
If licensed, Term of Underlying License:
7. Special Access Requirements:
8. Licensor Contact for Access for Emergency:
9. Licensee Contact for Emergency:
10. Licensee's Address for Notice Purposes:

REVIEWED BY:

**APPROVED
CITY OF WILMINGTON**

Department of License & Inspections

BY: _____

Department of Public Works

BY: _____

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

By: AT&T Mobility Corporation
Its: Manager

BY: _____
Name: John Green
Title: Area Manager
Date: _____

Attachments:

- Schedule 1: Site Plans of Premises
- Schedule 2: Equipment
- Schedule 3: Special Conditions on Use of Facilities
- Schedule 4: Proof of Compliance with Applicable Law

SCHEDULE 1

SITE PLANS OF PREMISES

Pursuant to the Master License Agreement for Attachments to City of Wilmington-Owned Facilities, between the City of Wilmington, a municipal corporation of the State of Delaware("Licensor"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with offices located at 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, GA 30319 ("Licensee").

The Premises are depicted as follows: See attached Site Plans and Specifications

A photosimulation of the proposed facility showing all of Licensee's Equipment and associated metering and electrical wiring that will be installed in relation to the surrounding area:

SCHEDULE 2

EQUIPMENT

Pursuant to the Master License Agreement for Attachments to Wilmington-Owned Facilities between the City of Wilmington, a municipal corporation of the State of Delaware ("Licensor"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with offices located at 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, GA 30319 ("Licensee").

Licensee's Equipment shall be the following:

Licensor Facility Type: Attachment to Public Street Light, traffic or other Licensor owned pole.
 Replacement of Public Street Light, traffic or other Licensor owned pole.

Type and Size of Equipment Cabinet: _____

Make of Antennas: _____

Number of antennas: _____

Number of feed lines: _____

Size of Feed Lines: _____

Other desired equipment: _____

Hazardous Materials at Site: _____

SCHEDULE 3

Special conditions on use of Licensor Facilities at proposed location:

Compensation required? If so, what is the compensation?

SCHEDULE 4

Proof of compliance with applicable law: construction may not begin at any location, and facilities may not be replaced until Licensee shows that it has obtained all necessary approvals under Federal, State or local law.

Federal:

1. Licensee's Equipment licensed by FCC?
2. Is NEPA applicable? If so, provide proof of compliance; if exempt provide, basis for exception.
3. Is NHPA applicable? If so, provide proof of compliance; if exempt provide, basis for exception.
4. State what FAA requirements apply, and provide proof of compliance.
5. Provide a certification that facilities will comply with applicable RF requirements.

State:

_____ Applicable authorization(s)?

Local:

Building permits?

Electrical permits?

Other permits?

Compliance with zoning requirements.

Compliance with franchise and/or licensing requirements