

Wilmington, Delaware
June 3, 2021

#0071

Sponsor:

**Council
Member
Oliver**

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 to grant licenses, easements, and/or rights-of-way as shall be necessary for the construction, installation, maintenance, repair, operation, and inspection of utilities, subject to the approval of City Council by resolution; 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 and related equipment on and about the City's water tower (the "Tower") located at or near New Castle Avenue, Route 9, Wilmington, Delaware 19720, sometimes referred to as Paper Place; and

WHEREAS, New Cingular Wireless PCS, LLC ("New Cingular") 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 December 8, 2011; and

WHEREAS, on November 17, 2011, 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 December 8, 2021; and

WHEREAS, the License Agreement, as amended, is set to expire on December 8, 2021; 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 three (3) additional terms of five (5) years each commencing on December 9, 2021 at the option of New Cingular; and (2) increase the license fee payable by New Cingular to the City under the License Agreement to \$48,380.88 annually for the year commencing on December 9, 2021, with an increase of three percent (3%) annually for each year thereafter.

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 (“New Cingular”), to permit New Cingular to continue to operate and maintain communications antennas and related equipment on and about the City’s water tower located at or near New Castle Avenue, Route 9, Wilmington, Delaware 19720, sometimes referred to as Paper Place. The Third Amendment will: (1) extend the term of the License Agreement for three (3) additional terms of five (5) years each commencing on December 9, 2021 at the option of New Cingular; and (2) increase the license fee payable by New Cingular to the City under the License Agreement to \$48,380.88 annually for the year commencing on December 9, 2021, with an increase of three percent (3%) annually for each year thereafter.

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EXHIBIT A

THIRD AMENDMENT TO LICENSE AGREEMENT

This Third Amendment to License Agreement (this “**Third Amendment**”) is effective as of the date of execution by the last party to sign (the “**Effective Date**”) and is entered into by and between the City of Wilmington, a municipal corporation of the State of Delaware (“**Licensor**”), having a mailing address of 800 North French Street, 6th Floor, Wilmington, Delaware 19801, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, Georgia 30319 (“**Licensee**”) (each individually, a “**Party**”, and collectively, the “**Parties**”).

WHEREAS, Licensor and Licensee (or its predecessor) entered into that certain License Agreement dated November 1, 1996, as amended by that certain First Amendment to License Agreement dated September 10, 2008 and as amended by that certain Second Amendment to License Agreement dated December 29, 2011 (collectively, the “**License Agreement**”), regarding Licensor’s leased area (“**Premises**”) located at or near New Castle Avenue, Route 9, Wilmington, Delaware 19720 (the “**Property**”); and

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

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

WHEREAS, Licensor and Licensee desire to amend the License Agreement to modify the notice section thereof; and

WHEREAS, Licensor and Licensee desire to amend the License Agreement as set forth below accordingly.

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

1. **License Agreement in Full Force and Effect.** The License Agreement is in full force and effect and neither Licensor nor Licensee is in breach under the terms of the License Agreement.
2. **Extension of Term.** Commencing as of December 9, 2021, the Term of the License Agreement will automatically be extended for three (3) additional and successive five (5) year terms (each a “**Renewal Term**”), provided, that Licensee may elect not to renew by providing Licensor thirty (30) days’ written notice prior to the expiration of the then current Renewal Term.
3. **License Fee.** At the commencement of the first Renewal Term provided for in this Third Amendment, Licensee shall pay Licensor Four Thousand Thirty-One and 74/100 Dollars (\$4,031.74) per month in rent (“**Rent**”) in advance, by the fifth day of each month. Accordingly, Licensee shall pay Licensor annual Rent of Forty Eight Thousand, Three Hundred Eighty and 88/100 Dollars (\$48,380.88) for the first year of the first Renewal Term

provided for in this Third Amendment. Rent shall be adjusted upward annually, effective on each anniversary of the Renewal Term, by an amount equal to three percent (3%) over the Rent for the immediately preceding year. This Rent adjustment shall supersede and replace any prior Rent adjustments.

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

“20.3 Notices. All notices, requests, demands and other communications regarding this License Agreement shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or sent via a nationally recognized courier to the addresses set forth below. Licensor or Licensee may from time to time designate any other address for the purpose of giving notice by providing thirty (30) days’ written notice to the other party as provided herein. The copy sent to Licensee’s Legal Department is an administrative step which alone does not constitute legal notice.

If to Licensor:

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

With a required copy to:

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

If to Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Admin
Cell Site Name: Dunlieth (DE)
Fixed Asset Number 10071463
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, Georgia 30319

With a required copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department – Network
Operations
Cell Site Name: Dunlieth (DE)
Fixed Asset Number 10071463
208 S. Akard Street
Dallas, TX 75202-4206

5. **Cooperation.** Licensee and Licensor will reasonably cooperate with each other’s requests to approve permit applications and other documents related to the Property to the extent permitted by law.
6. **Other Terms and Conditions Remain.** Except as expressly set forth in this Third Amendment, the License Agreement otherwise is unmodified and remains in full force and effect. To the extent any provision contained in this Third Amendment conflicts with the terms of the License

Agreement, the terms and provisions of this Third Amendment shall control. Each reference in the License Agreement to itself shall be deemed also to refer to this Third Amendment.

- 7. **Counterparts.** This Third Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic copies of this Third Amendment will legally bind the Parties to the same extent as originals.
- 8. **Authority.** Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Third Amendment.
- 9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the License Agreement.

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

Licensor:

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

By: _____
Print Name: _____
Title: _____
Date: _____

Licensee:

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

By: AT&T Mobility Corp.
Its: Manager
By: _____
Print Name: _____
Title: _____
Date: _____

ACKNOWLEDGEMENTS

LICENSOR

Witnessed or Attested by:

_____ (Seal)

State of Delaware, County of New Castle, ss:

I CERTIFY that on _____, 2021, _____ personally came before me and that person acknowledged under oath, to my satisfaction, that he/she is _____ of the City of Wilmington, the entity named in the within document, and thereupon he/she acknowledged that he/she signed, sealed, and delivered the same as the act and deed of said municipal corporation for the purposes therein expressed.

Notary Public

Print Name: _____

My commission expires: _____

LICENSEE

Witnessed or Attested by:

_____ (Seal)

_____ (Seal)

State of _____, County of _____, ss:

I CERTIFY that on _____, 2021, _____ and _____ personally came before me and those persons acknowledged under oath, to my satisfaction, that they are all of the members [and all of the managers] of _____, a limited liability company, the entity named in the within document, and thereupon they acknowledged that they signed, sealed, and delivered the same as the act and deed of said limited liability company for the purposes therein expressed.

Notary Public

Print Name: _____

My commission expires: _____