

# RESOLUTION

No. 19-599

Approved as to Form and Legality

JOHN MORELLI, CITY ATTORNEY

Date of Adoption

NOV 14 2019

Factual content certified by

STEVEN PICCO, EXECUTIVE DIRECTOR, WATER & SEWER

Councilman/woman

presents the following Resolution:

**RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC (AT&T), 200 NORTH WARNER ROAD, KING OF PRUSSIA, PA 19406 FOR LEASE SPACE FOR CONSTRUCTION OF A MONOPOLE ANTENNA ON THE EAST LAGOON PROPERTY, BIDDER WILL PAY THE CITY OF TRENTON \$156,121.20 BID2019-67**

**WHEREAS**, two (2) sealed bids were received on October 9, 2019, for Lease Space for Construction of a Monopole Antenna on the East Lagoon Property for a period of five (5) years with additional five (5) years renewals if both parties agree to the terms of the renewal for the City of Trenton, Department of Water and Sewer; and

**WHEREAS**, the low bidder, New Cingular Wireless PCS, LLC (AT&T), 200 North Warner Road, King of Prussia, PA 19406 made pursuant to advertisement, be and is hereby accepted, as the responsive, responsible bidder complying with terms and specifications on file in the Division of Purchasing; and

**WHEREAS**, New Cingular Wireless PCS, LLC (AT&T) will pay the City of Trenton \$30,000.00 for the first (1) year. There shall be an annual increase in rent of two percent (2%) for each year of the initial term which is a five (5) year term and any subsequent renewal terms if both parties agree to the terms of renewal. New Cingular Wireless PCS, LLC (AT&T) has an option to renew for two (2) additional consecutive five (5) year terms; under the same terms and conditions as the original lease.

**NOW, THEREFORE, IT IS RESOLVED**, by the City Council of the City of Trenton that the Mayor is hereby authorized to execute a contract with New Cingular Wireless PCS, LLC (AT&T), 200 North Warner Road, King of Prussia, PA 19406 for Lease Space for Construction of a Monopole Antenna on the East Lagoon Property for a period of five (5) years with additional five (5) years renewals if both parties agree to the terms of the renewal for the City of Trenton, Department of Water and Sewer for the said purposes in the manner prescribed by law.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BLAKELEY	✓				MUSCHAL	✓				MCBRIDE				
CALDWELL					RODRIGUEZ		✓							
WILSON				✓	VAUGHN	✓								✓
HARRISON	✓													

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on

NOV 14 2019

President of Council

City Clerk

## OPTION AND LICENSE AGREEMENT

**THIS AGREEMENT** ("Agreement"), entered into this \_\_\_\_ day of \_\_\_\_\_ 2020 ("Effective Date"), between City of Trenton, with a place of business at 319 E. State Street, Trenton, New Jersey ("Licensor") and New Cingular Wireless PCS LLC, a Delaware limited liability company, with a place of business at 1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor, Atlanta, GA 30319 ("Licensee").

**WHEREAS** Licensor owns a certain parcel of property at 1502-1508 Lamberton St., Trenton, NJ 08608, as is more particularly described in **Exhibit "A"** hereto (the "Parcel");

**WHEREAS** Licensee has requested that Licensor grant Licensee an option to license a portion of the Parcel in order to install and operate a wireless communication site to consist of a Monopole, concrete pad, shelter cabinet and related equipment, including, as may be applicable, transmission lines, cables, antennas, fixtures and other associated equipment (collectively, "Licensee's Improvements") in the locations and as more particularly shown on "**Exhibit B**" hereto (the "Licensed Premises").

**WHEREAS** Licensor is willing to grant such option upon the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and intending to be legally bound thereby, Licensor and Licensee agree as follows:

1. **Grant of Option.** In consideration of Licensee's non-refundable payment of \$4,000 to Licensor within forty-five days of the full execution and delivery of this Agreement (the "Option Payment"), Licensor hereby grants Licensee an option (the "Option") to license the Licensed Premises to install and operate Licensee's Improvements as a wireless communications site as more particularly described and shown on the plans attached hereto as **Exhibit "B"** and in accordance with the terms and conditions set forth in this Agreement (the "License").
2. **Permitted Inspections during Option Period.** Licensee has 180 days from the date of this Agreement (the "Option Period") within which to conduct, at Licensee's sole cost and expense, such inspections, surveys, structural strength analyses, radio frequency tests and other non-invasive tests of and relating to the Parcel as Licensee deems reasonably necessary to determine the suitability of the Parcel for Licensee's permitted use (the "Inspections"). Invasive Inspections are not permitted without the prior written consent of Licensor, which consent shall not be unreasonably withheld, conditioned, or delayed. Entry on the Parcel is at the sole risk of the person entering. Licensee shall at its sole cost and expense immediately repair all damage resulting from such Inspections and restore the Parcel to the condition in which it existed prior to such Inspections. Licensee shall not interfere with Licensor's use of the Parcel, damage, harm or impair the potable water thereon or otherwise harm or create any risk of harm to the public health, safety or welfare.
3. **Exercise of Option.** Licensee may exercise the Option only by providing Licensor with written notice thereof (the "Option Notice") and the License Payment (as defined below) for the first year of the term prior to the expiration of the Option Period and, in such event, the License shall be deemed granted and effective as of the date that the Option is exercised ("Term Commencement Date"). If Licensee does not exercise the Option in accordance with the terms hereof, the Option shall irrevocably terminate, and all rights and privileges granted to Licensee hereunder shall be deemed completely surrendered and, except for those obligations which are intended to survive termination hereof, neither party shall have any further liability hereunder.

4. **Installation.**

4.1 Notwithstanding anything which may be contained in this Agreement to the contrary, (a) Licensee's Improvements may not be modified or replaced without the prior written consent of Licensors, which consent will not be unreasonably withheld, conditioned, or delayed, and (b) Licensee's Improvements may not be moved, relocated or expanded without the prior written consent of Licensors which consent may be granted, withheld, delayed or conditioned in Licensors's sole discretion. The foregoing shall not apply to like-kind exchanges and replacements, which may be made without Licensors's consent, provided Licensee provides notice to Licensors within a reasonable period. In the event of an emergency, Licensee may repair and replace equipment and provide such notice to Licensors as is reasonable under the circumstances.

4.2 Licensee's Improvements shall be operated, used, installed, repaired and maintained at Licensee's sole cost and expense and in strict compliance with all applicable laws, regulations and governmental requirements. Without limitation, Licensee shall furnish and pay for all utilities and services consumed by Licensee's Improvements and, subject to the provisions contained herein, Licensors shall reasonably cooperate (all of which shall be at Licensee's sole cost and expense) with Licensee and any company providing utility service in order to bring needed utility service to the Licensed Premises. All utilities and services shall be separately metered and shall in no way interfere with the use of the Parcel by Licensors or any other occupant and may only be located and installed in locations and in a manner approved by Licensors in advance. Without limitation, all costs and expenses associated with Licensors's review of any proposed utility service installation shall be paid by Licensee.

4.3 Licensee shall provide Licensors with at least 15 days prior written notice before the commencement of the construction or installation of Licensee's Improvements. After receipt of such notice, at Licensors's request, Licensors, Licensee or Licensee's contractors will participate in a pre-construction meeting.

5. **Term.** The initial term hereof shall be for 5 years commencing as of the Term Commencement Date (such 5 year period being the "Original Term"), unless earlier terminated as provided in this Agreement or by operation of law.

6. **License Payments.**

6.1 **Annual License Payments.** The annual license fee ("License Payment") for each year of the Original Term and of any Extended Term(s), if applicable pursuant to Section 6.2 below, shall be \$30,000 for each lease year and shall increase by 2% each year during the Original Term and all Extended Terms, if applicable.

Pursuant to section 3 above, the License Payment for the first year of the Original Term is due and payable at the time that Licensee exercises the Option. Thereafter, each year on the anniversary of the Term Commencement Date the annual License Payment shall be paid annually, in advance, without setoff, notice, or demand, at the address for Licensors as set forth herein. Without limitation of any other rights or remedies as may be available to Licensors, any payment required to be paid by Licensee to Licensors hereunder not made within 5 days of the due date thereof shall bear interest at the lesser of (i) the rate of one and one-half percent (1.5%) per month or (ii) the highest rate permitted by applicable law on the amount due from the original due date through and including the date of payment (even if and after judgment is entered). All realty transfer taxes, fees and charges shall be paid by Licensee.

6.2 Provided that Licensee is not then in default hereunder beyond any applicable cure periods, Licensee shall have the option to extend the term of this Agreement for four (4) additional 5 year periods at the annual License Payments set forth above (each an "Extension Term"). Each option for an Extension Term shall be deemed automatically exercised without notice by Licensee to Licensors unless Licensee gives Licensors written notice of its intention not to exercise any such option at least 365 days prior to the expiration of the then-current term, in which case, the term of this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement shall include the Original Term and any Extension Term.

7. **No Warranties.** Licensors makes no warranty or representation, whether express or implied, as to (i) suitability of the Parcel for the purposes of Licensee, (ii) the condition of the Parcel or the Licensed Premises, or (iii) any other matter or thing relating to the Parcel, or the Licensed Premises. Licensors is granting this Agreement on an "AS IS, WHERE IS, WITH ALL FAULTS, VISIBLE AND LATENT, KNOWN AND UNKNOWN" basis, and Licensors has no obligation to maintain, repair, expand, modify, change, alter, replace, paint or clean the Parcel or any improvements thereon. Licensee acknowledges that Licensors has provided Licensee with full and complete access to the Parcel for the purpose of determining whether the Licensed Premises are adequate and suitable for Licensee's intended purpose. If Licensee exercises the Option, Licensee further acknowledges and agrees that Licensee is entering into this Agreement based solely on its own assessment of the Parcel (including the Parcel's title) and is not relying on any statements, warranties or representations of Licensors, its employees or agents, relating to the fitness, condition or suitability of the Parcel or the Licensed Premises.

8. **Plan Approval.**

8.1 Prior to commencing construction on any approved work of, to or in connection with Licensee's Improvements, Licensee must provide detailed specifications, plans and other ancillary materials (collectively, the "Plans") to Licensors for prior written approval, which, in the case of a permitted modification or replacement, shall not be unreasonably withheld, conditioned, or delayed, but otherwise may be granted, withheld, delayed or conditioned in Licensors's discretion. If Licensors does not approve such Plans in writing within 60 days after receipt, the Plans are deemed denied. Notwithstanding anything to the contrary contained herein, Licensee may make (i) modifications to and replacements of Licensee's Improvements located wholly within Licensee's Building, or (ii) like-kind exchanges and replacements, without Licensors's prior written consent.

8.2 Licensors, or its agent, shall have the right at all times and from time to time to inspect the Licensee's Improvements to ensure that such are in full compliance with the approved Plans and this Agreement ("Equipment Inspections"). In the event that the Equipment Inspections identify any deviation from the approved Plans, or any work which fails to meet the standards contained in this Agreement and without limitation of such other rights and remedies as may be available to Licensors, Licensee, at its sole cost and expense, shall correct such work as soon as possible, and, in addition, shall reimburse Licensors for all costs and expenses associated with the Equipment Inspections within not more than ten days after receipt of an invoice therefor. After completion of the work, Licensors has the right to conduct subsequent Equipment Inspections to ensure that all work has been properly performed. The cost of all Equipment Inspections resulting from Licensee's failure to perform the work as required hereunder shall be borne by Licensee. Upon each instance that Licensors and/or its representatives require access to

the Licensed Premises, Licensors shall give Tenant reasonable notice of such access as soon as reasonably practicable. Licensors shall use its best efforts to minimize any interference with and to the Licensee's Improvements and Licensee's operations at the Licensed Premises during Licensors' access thereto. In connection with Licensors' access to the Premises, Licensors may not alter, modify, make hard connections to, power down, or otherwise adversely affect the operation of the Licensee's Improvements without Licensee's consent.

9. [Intentionally deleted.]

10. **Approvals.** Licensee, at Licensee's sole cost and expense, is solely responsible for obtaining (and maintaining in full force and effect at all times) and shall promptly apply for and diligently pursue all necessary Federal, State and local governmental permits, licenses and approvals, including but not limited to any approvals required by the Federal Aviation Administration for installation and operation of Licensee's Improvements (and any permitted change, alteration, modification, replacement or relocation thereof) and for Licensee's use of the Licensed Premises (collectively, "Approvals"). Licensee shall keep Licensors reasonably apprised of Licensee's efforts to obtain the Approvals and shall promptly provide Licensors with copies of all submissions, applications, correspondence (including electronic correspondence) associated with or in any way relating to Licensee's efforts to obtain and maintain the Approvals, subject to Licensors' execution of a confidentiality agreement. The cost of compliance with all conditions of the Approvals (including but not limited to such things as required landscaping, buffering, etc.) shall be at the sole cost and expense of Licensee, but this shall not constitute permission for Licensee to install, erect or construct any improvement or undertake any other action which is not specifically approved by Licensors and permitted by the terms of this Agreement, it being specifically acknowledged and agreed that Licensee has no right to install any improvement or perform any work which has not been approved by Licensors. Notwithstanding anything which may be contained in this Agreement to the contrary, if Licensors determines, in the Licensors' sole discretion, that Licensors' public image has been or will be adversely affected or harmed as a result of Licensee's attempts to obtain the Approvals, Licensors shall have the option, exercisable in Licensors' sole discretion and opinion, to immediately terminate this Agreement by providing written notice thereof to Licensee whereupon there shall be no further liability to either party hereto, except that any advance License Payments which are attributable to the period after termination shall be returned to Licensee. No construction, installation or operation of the Licensee's Improvements or other work is permitted until all Approvals are final, appealed and all appeal periods have expired.

11. **Installation.** Upon Licensors' approval of the Plans as provided herein, Licensee may commence construction and installation of Licensee's Improvements, provided however, that during construction and installation: (i) Licensee shall comply with all reasonable requirements of Licensors; (ii) Licensee, by and through its agents, contractors and employees, shall monitor construction and minimize any adverse impact on Licensors' operations and (iii) Licensee shall coordinate with Licensors all access to the Parcel and comply with all security, access, and advance notice requirements as Licensors may adopt, provided such requirements (i) are applied in a non-discriminatory manner to similarly situated occupants; (ii) do not materially circumvent, contradict, or unduly frustrate or burden the purposes of this Agreement; and (iii) are not changed in a manner which materially adversely affects Licensee's permitted use under this Agreement, conflicts with any terms of this Agreement, or increases Licensee's financial obligations under this Agreement.

12. **Work Requirements.** Licensee, at its sole cost and expense, shall cause all approved work to be done and completed in a timely, good, safe and workmanlike manner, free from faults and defects, and in compliance with all applicable legal requirements and generally accepted engineering and construction practices and safety requirements, including but not limited to all applicable standards promulgated by the Occupational Safety and Health Administration. Licensee shall utilize only first-class materials and supplies. Licensee shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating and supervising all activities related to the work.

13. **Access.** Licensee shall have access to the Licensed Premises on a 24-hour basis. It is agreed, however, that Licensee shall only permit authorized employees or contractors of Licensee or persons under their respective direct supervision to access the Licensed Premises. Licensee shall be solely responsible for the acts or omissions of all individuals for whom it grants access to the Parcel or who have gained such access as a result of or related to Licensee's operations or activities thereon. All entry shall be at the sole risk of the person entering and Licensors shall have no liability or responsibility in connection with any such entry.

14. **Payments of Costs.** Anything contained in this Agreement to the contrary notwithstanding, Licensee shall carry out its obligations hereunder, including those obligations in Sections 2, 4, 8, 10, 11, 12, , 16 and 23, at its sole cost and expense, including providing all labor, materials, supplies, tools, machinery and other facilities and services necessary for the proper execution and completion of Licensee's obligations. Licensee shall pay all sales, use and similar taxes and shall pay for all permits, fees and licenses required in connection therewith. If requested by Licensors, Licensee shall, at Licensee's sole cost and expense, engage such third-party consultant as may be specified by Licensors to conduct pre-work construction meetings, post-work inspections/meetings and to otherwise monitor all work to be performed on the Parcel, including but not limited to Licensee's initial installation and construction, subsequent modifications, replacements, removal of Licensee's Improvements at the expiration or termination hereof and all other work performed by or on behalf of Licensee on the Parcel.

15. [Intentionally deleted.]

16. **Licensee's Duties.** Licensee shall operate, use, keep and maintain Licensee's Improvements in a good state of repair and in good operating condition and appearance, all in accordance with generally accepted standard industry practices and all applicable local, state and federal government rules and regulations, including but not limited to the standards set forth by the Occupational Safety and Health Administration, the Federal Aviation Administration, the Federal Communications Commission, and the American Water Works Association.

17. **Interference.**

17.1 Licensee represents and warrants to Licensors that (a) it is aware of all existing radio frequency and communication uses on the Parcel and all adjoining parcels and lots owned or controlled by Licensors as of the date of execution hereof, (b) it has fully and independently investigated the operations of all existing radio frequency and communication users, and (c) provided that the existing radio frequency and communication users operate within their respective frequencies and in accordance with all applicable laws and regulations, Licensee's use of and operations on the Licensed Premises will not interfere in any way with the existing radio frequency and communication uses on the Parcel. Prior to installation of Licensee's Improvements, Licensee shall confer with all other relevant occupants of the Parcel and of any adjoining parcels or lots owned by Licensors to determine proper antenna separation and related matters so that no interference of any kind will be caused to or with such occupant's

communication facilities or the operation thereof. In the event that Licensee's operation interferes in any way with any existing radio frequency or communication user operating within their respective frequencies and in accordance with all applicable laws and regulations, Licensee will cease such interference within 48 hours after receipt of notice thereof. If all such interference is not eliminated within such 48-hour period, Licensee shall cease operations (except for intermittent testing to determine the cause of such interference) until all interference of every kind has been eliminated.

17.2 Provided that Licensee at all times operates within its permitted frequencies, in accordance with all applicable laws, regulations and the requirements contained in this Agreement and subject in all respects to the provisions of section 17.1 above and Licensor's right to exercise all of the rights, privileges and benefits provided or otherwise available to Licensor in this Agreement, Licensor will not cause radio interference with the lawful operations of Licensee ("Licensor Caused Interference"). Licensor will cause any Licensor Caused Interference to cease within 48 hours after receipt of notice of interference from Licensee. In the event the Licensor Caused Interference does not cease within the aforementioned cure period, Licensor shall cease all operations which are suspected of causing Licensor Caused Interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. If such Licensor Caused Interference is not cured within ten calendar days of Licensee's original notice to Licensor, Licensee may terminate this Agreement, without penalty upon notice to Licensor and Licensor shall return to Licensee within 60 days of such termination and Licensee's compliance with Section 26 hereof a pro rata refund of any pre-paid License Payment. **Notwithstanding anything which may be contained in this Agreement to the contrary, in no event shall Licensor be liable to Licensee for any interference caused by (1) any occupant of the Parcel or any adjoining parcels or lots which are owned or controlled by Licensor or (2) the operation of Licensor's two-way radio system.** If Licensee is in compliance with the terms of this Agreement and experiences interference caused by a third-party occupant deriving their rights from or through Licensor, Licensee shall provide prompt written notice thereof to Licensor. Within not more than 5 business days after receipt of such notice, Licensor shall send notice to the third party requesting that the interference cease (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. In the event any such interference does not cease within 10 business days after receipt of notice of interference, Licensee shall have the right to elect to: (i) terminate this Agreement upon notice to Licensor, or (ii) take any action against such third party at law or in equity as may be available to cause the interfering party to eliminate the interference. Licensor makes no representation or warranty that Licensee has or shall have any action against such third party, Licensor shall have no liability or responsibility in connection therewith and in no event shall Licensor be a party to or otherwise involved in any such action. Subject to the requirement to provide notice of interference and request that it cease as described above, in no event shall Licensor be liable to Licensee for any interference caused by a third party deriving their rights from or through Licensor. If Licensee exercises its option to terminate this Agreement as set forth above, Licensor shall have no liability to Licensee except that Licensor shall return to Licensee within 60 days of such termination and Licensee's compliance with Section 26 hereof a pro rata refund of any pre-paid License Payment.

17.3 Licensor reserves the right to use good faith efforts to attempt to reasonably resolve any interference issues which arise at the Parcel and to encourage reasonable coordination and cooperation between all occupants at the Parcel. Except for providing the

notice required by Section 17.2, Licensor shall not be required to spend money, incur costs, exercise any rights or remedies or institute any action at law or in equity against any other occupant at the Parcel. **Except for providing the notice required by Section 17.2, Licensee agrees that Licensor shall have no liability of any kind or nature to Licensee and Licensee shall have no claim against Licensor as a result of or in connection with any interference caused by any occupant of the Parcel or any adjoining parcel or lot owned or controlled by Licensor.**

17.4 For the purposes of this Agreement, "interference" may include any use on the Parcel that causes material electronic or physical obstruction with, or degradation of, the communications signals.

18. **Indemnification.**

18.1 Licensee hereby releases Licensor, its agents and employees from, and waives any and all claims for damages, suits, costs, liabilities or injuries of any and every kind, including death to persons or damage to or theft or misappropriation or loss of property or loss of business or revenue sustained by Licensee, to the extent same result from, relate to, or are caused by Licensee's use or operation at the Parcel, the condition of the Parcel, any activity, work or thing done by Licensee, its agents, invitees, employees or contractors in or about the Parcel, or due to any other act for omission of Licensee, its agents, invitees, employees or contractors.

18.2 To the fullest extent permitted by law and without limitation of such other indemnification and hold harmless obligations contained herein, Licensee shall indemnify, defend and hold Licensor, its agents and employees, harmless from and against any and all claims, losses, liabilities, damages, suits, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) to the extent same are incurred or suffered as a result of, arise from or relate to Licensee's breach of any term or condition of this Agreement or from the acts or omissions of Licensee, its agents, employees or contractors.

19. [Intentionally deleted.]

20. **Insurance.** Commencing as of the Effective Date, Licensee shall maintain, at its own expense, worker's compensation insurance at statutory limits and insurance covering claims for public liability, personal injury, death and property damage under a policy of general liability insurance on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, issued by an insurance company with an AM Best rating of no less than A-VII, with limits of two million dollars (\$2,000,000) combined single limit per occurrence, combined single limit for property damage and bodily injury and four million dollars (\$4,000,000) aggregate. Licensor shall have the right to reasonably increase the foregoing insurance limits no more than once during each five (5) year term. Such insurance policy shall insure against liabilities caused, in whole or in part, by Licensee's and its employees', agents', contractors' and representatives' use of the Parcel. Licensee shall furnish a certificate of insurance to Licensor evidencing such coverage within not more than 5 days after execution hereof and from time to time throughout the term hereof upon request from Licensor. Licensee shall give Licensor 30 days prior written notice of any cancellation or non-renewal of any required insurance that is not replaced. All insurance policies maintained by Licensee shall contain a waiver of subrogation for Licensor's benefit and shall include Licensor as an additional insured. Licensee shall be solely responsible for any loss or damage to Licensee's Improvements. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors and (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its



employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors. The provisions of this Section shall not limit, negate or in any way impair any other obligations that Licensee has to Licensor and specifically, and without limitation do not limit, negate or impair in any way Licensee's obligations under Section 18 hereof.

21. **Mechanic's Lien.** Licensee shall not permit any contractor's, mechanic's or other liens against the Parcel or any part thereof or Licensee's interest therein by reason of work, labor services, or materials supplied or claimed to have been supplied to or for Licensee. If, however, any such lien shall at any time be filed, Licensee shall within thirty (30) days of receipt of notice of the filing of any such lien, cause the same to be discharged of record by payment or bond and shall indemnify, defend and hold Licensor harmless from any liability, demands, claims, damages, causes of action, cost and expense of any nature whatsoever (including reasonable attorneys' fees and costs) to the extent same directly arising from or in any way related to such lien. This indemnity shall survive the expiration or earlier termination of this Agreement.

22. [Intentionally deleted.]

23. **Environmental.** Without limiting the generality of any provision set forth elsewhere in this Agreement:

(i) Licensee shall not cause, permit or allow:

(A) any violation of any Environmental Laws (as hereinafter defined) in, on, at, under or about the Parcel, including, but not limited to, soil and ground water conditions; or (B) the escape, disposal, release, use, generation, manufacture, refining, production, processing, storage or disposal of any Hazardous Materials (as hereinafter defined) in, on, at, under or about the Parcel, or the transportation to or from the Parcel of any Hazardous Materials in violation of applicable laws, except for the use of sealed batteries for emergency backup, any fire suppression system, diesel fuel and petroleum products and small quantities of cleaning products ordinarily used by commercial businesses ("Permitted Substances"), provided that Licensee shall not allow the storage or use of such Permitted Substances in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage or use of such Permitted Substances, nor allow to be brought onto the Parcel any such Permitted Substances except to use in the ordinary course of Licensee's business, and then only after notice thereof is given to Licensor;

(ii) Licensor and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Parcel.

(iii) Licensee covenants and agrees that the Parcel will, at all times during Licensee's use and occupancy thereof, be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, ordinances, orders, permits and regulations of all state, federal or local and other governmental and regulatory authorities, agencies and bodies applicable to the Parcel pertaining to environmental matters, or regulating, prohibiting or otherwise having to do with Hazardous Materials or asbestos and all other toxic or hazardous wastes (collectively, "Environmental Laws") as they apply to Licensee's use of the Licensed Premises. For purposes hereof, "Hazardous Materials" shall include all pollutants, toxic substances, hazardous waste, hazardous substances or petroleum products, including those

materials regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, - U.S.C. §9016, et seq., Superfund Amendment and Re-Authorization Act of 1986, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, - U.S.C. §6901, et seq.; Occupational Safety and Health Act of 1970; the Toxic Substance Control Act; the Solid Waste Disposal Act; the Clean Air Act; and the Clean Water Act; and the regulations adopted in publications promulgated pursuant to the above laws and in any applicable state, county and city laws, ordinances or regulations;

(iv) Licensee will be solely responsible, at its sole cost and expense, to cleanup and remediate all spills and discharges to the extent caused by or due to the acts of omission of Licensee, its agents, employees or contractors with respect to Hazardous Materials or Permitted Substances brought onto the Parcel by Licensee, its agents or employees or their failure to comply with all applicable Environmental Laws. Licensee shall immediately notify Licensors in writing of all such incidents. The receiving party, shall immediately deliver to the other party a copy of any summons, citation, directive, notice, complaint, letter or other communication from any federal, state or local environmental agency, concerning any alleged violations of any Environmental Laws on the Parcel, or concerning any investigation or request for information relating to the use, generation, handling, treatment, storage or disposal of Hazardous Materials in connection with the Parcel; and

(v) Licensee will indemnify, defend and hold harmless Licensors, its agents and employees, from and against any and all liabilities, reasonable expenses, penalties, fines, claims, demands, liabilities, costs, assessments, expenses (including reasonable attorney's, engineer's and consultant's fees and court costs) to the extent incurred by reason of Licensee's failure to comply with this Agreement, including, but not limited to, the cost of bringing the Parcel into compliance with all laws, the reasonable cost of all appropriate tests and examinations of the Parcel to confirm that the Parcel has been brought in compliance with all laws and the reasonable fees and expenses of Licensors' attorneys, engineers and consultants in enforcing and confirming compliance with this Agreement. This indemnity specifically includes all reasonable costs, expenses and fees incurred by Licensors in connection with any investigation, clean-up, removal, remediation or restoration of the Parcel due to Licensee's failure to comply with this Agreement or otherwise caused by or due to the acts or omission of Licensee, its employees, agents or contractors. Licensors and Licensee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 23. This indemnification shall survive the expiration or earlier termination of this Agreement.

(vi) In the event that Licensee becomes aware that there are any Hazardous Materials on the Parcel which violate any Environmental Law, Licensee shall provide immediate written notice thereof to Licensors, together with a reasonably detailed description of the nature, type and location of the Hazardous Material and all other information relating to such matter as is known to Licensee. If: (a) Licensee provides written notice thereof to Licensors as required above within 5 days after Licensee becomes aware of such Hazardous Material; (b) such Hazardous Material was not present on the Parcel prior to the Effective Date hereof; (c) such Hazardous Material was not placed, brought onto, delivered or otherwise permitted or allowed on the Parcel by Licensee, its agents, employees or contractors; and (d) Licensee has provided Licensors with a written

report from a certified environmental engineer with suitable experience in matters of this type, certifying to Licensor that such Hazardous Material violates an Environmental Law then, if Licensor does not reasonably remove such Hazardous Material within 180 days thereafter, Licensee shall have the right, as its sole right and remedy, to terminate this Agreement within 10 days after expiration of Licensor's 180 day removal period described above, in which event, except for such obligations which are intended to survive termination hereof, the parties shall have no further liability to each other.

24. **Default.**

24.1 **Event of Default.** The following shall be considered an "Event of Default":

(i) If Licensee shall default in timely payment of any part of the License Payment(s), or other charge or amount payable by Licensee hereunder and such amount remains unpaid for more than thirty (30) days after written notice from Licensor of such failure to pay; or

(ii) The filing of a petition by or against Licensee for an adjudication as a bankrupt or insolvent, or for Licensee's reorganization, or for the appointment of a receiver or trustee of Licensee's property; an assignment by Licensee for the benefit of creditors; or the taking of possession of the property of Licensee by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Licensee; the commencement of levy, execution or attachment proceedings against Licensee or a substantial portion of Licensee's assets, which petition, appointment, or proceedings are not vacated within 120 days; or

(iii) If Licensee fails to observe or perform any of Licensee's other covenants, agreements or conditions in this Agreement and shall allow such failure to continue for a period of 30 days after written notice thereof by or on behalf of Licensor; provided, however, that if such failure cannot, even with the exercise of all diligence, be cured within such 30 days and if Licensee shall proceed promptly to cure the same and thereafter shall prosecute such curing with reasonable diligence to completion, then upon receipt by Licensor of a certificate from Licensee stating the reason such failure cannot be cured within 30 days after such notice and stating the estimated time necessary to fully cure such failure with reasonable diligence, the time period within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with reasonable diligence but in no event shall such time period exceed 60 days after notice thereof.

24.2 **Remedies of Licensor.** If any Event of Default occurs, then and in each such case, Licensor may treat the occurrence of such Event of Default as a breach of this Agreement and, in addition to any and all other rights or remedies of Licensor in this Agreement or at law or in equity provided, it shall be, at the option of Licensor without further notice, demand or any other act:

(i) The right of Licensor (with or without terminating this Agreement) to remove all persons and equipment from the Parcel and Licensee shall have no further claim thereto. Licensor shall, notwithstanding any termination of this Agreement, be entitled to recover from Licensee as damages (all of which shall be immediately due and payable) any unpaid sums, including interest thereon, due and owing as of the date of termination, plus an amount equal to the loss of License Payment(s) for the balance of what otherwise would have been the Original Term or any then current exercised Extension Term, plus any other amount necessary to compensate Licensor for all damages caused by or in any way due to the Event of Default, which may include, without limitation, the cost of removing Licensee's Improvements and returning the Parcel to the condition in which it existed prior to Licensee's occupancy thereof, reasonable wear and tear excepted, and reasonable attorney's fees and court costs; and/or

(ii) The right of Licensor to bring suit for the collection of License Payment(s) (including all additional sums) as such accrues pursuant to the terms of this Agreement or to accelerate the License Payment(s) due for the balance of the Original Term, or any then current exercised Extension Term, and for all damages and costs sustained or incurred (including, without limitation, reasonable attorney's fees and court costs) without terminating this Agreement.

24.3 **Waiver of Reinstatement Rights.** Notwithstanding anything to the contrary set forth elsewhere in this Agreement, Licensor may exercise any and all rights and remedies under this Agreement in addition to those it may have at law or equity and Licensee is, and shall be forever precluded and barred from reinstatement under this Agreement.

24.4 **No Limitation of Remedy.** Subject in all respects to Section 24.6 hereof, mention in this Agreement of any particular remedy shall not preclude either party from any other remedy at law or in equity to which it may be entitled, and all remedies shall be concurrent and not exclusive.

24.5 **Licensor's Default.** If Licensor fails in the observance or performance of any of Licensor's agreements or obligations in this Agreement and shall allow such failure to continue for a period of 45 days after receipt of written notice thereof by or on behalf of Licensee, Licensor shall be in default hereunder provided, however, that if such failure cannot, even with the exercise of reasonable diligence, be cured within such 45 days and if Licensor shall proceed reasonably promptly to cure the same and thereafter shall prosecute such curing with reasonable diligence to completion, then upon receipt by Licensee of a certificate from Licensor stating the reason such failure cannot be cured within 45 days after receipt of such notice and stating the estimated time necessary to fully cure such failure with reasonable diligence, the time period within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with all reasonable diligence and during such period Licensor shall not be in default hereunder and Licensee shall have no right to exercise any right or remedy in connection therewith.

24.6 **Mitigation.** As a condition precedent to any right to recover from Licensor, Licensee shall take all commercially reasonable steps to mitigate all losses and all damages sustained as a result of the breach.

24.7 **EACH PARTY EXPRESSLY AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR OTHERWISE, UNDER NO CIRCUMSTANCES SHALL THE OTHER PARTY, ITS AGENTS OR EMPLOYEES, BE LIABLE, UNDER ANY THEORY OF RECOVERY, WHETHER BASED ON CONTRACT, NEGLIGENCE OF ANY KIND, STRICT LIABILITY IN TORT OR OTHERWISE, FOR LOSS OF PROFITS, BUSINESS, OR REVENUE, FOR CLAIMS OF CUSTOMERS OR PURCHASERS OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED BY THE OTHER PARTY BUT NOTHING CONTAINED HEREIN SHALL RELEASE LICENSEE FROM ITS OBLIGATIONS TO TIMELY PAY ALL LICENSE PAYMENTS AND ALL OTHER MONETARY OBLIGATIONS DUE OR PAYABLE TO LICENSOR HEREUNDER.**

25. **Surrender of Premises.**

Not later than within 60 days of expiration or termination of the License, Licensee, at its own cost and expense, shall completely remove or have removed, all Licensee's Improvements including all structures, equipment, monopoles, utilities and, fences and all other fixtures and

structures and restore the Parcel to its original condition and appearance, ordinary wear and tear only excepted. If Licensee fails to fully and timely comply with Licensee's obligations hereunder, in addition to such other rights and remedies as are available to Licensors, Licensee shall pay to Licensors a per diem penalty charge of \$1,000 for each day that Licensee is not in strict compliance with the terms hereof.

26. **Assignment.** Licensee may assign this Agreement, upon notice thereof to Licensors to be provided not later than 5 days after such assignment, to any affiliate, subsidiary or parent company or to any entity which acquires all or substantially all of the assets of Licensee in the market in which the Licensed Premises are located or to its lenders. Other than as may be set forth in the first sentence of this section, Licensee shall not (i) assign or transfer any rights, benefits, duties and obligations under this Agreement, (ii) sublicense the Licensed Premises or any part thereof, whether voluntarily or by operation of law or (iii) or permit the use of the Licensed Premises or any part thereof by any person or entity other than Licensee without Licensors' consent which may be granted, withheld, delayed or conditioned in Licensors' sole opinion and discretion.

27. **Notice.** All notices, consents and approvals required or permitted hereunder must be in writing and shall be deemed valid, if sent by certified mail, return receipt requested, addressed as follows, or sent to any other address that the party to be notified may have designated to the sender by like notice:

As to Licensors:

City of Trenton  
Attn: Business Administrator  
319 East State Street  
Trenton, NJ 08608

With a copy to:

Law Department  
City of Trenton  
319 East State Street  
Trenton, NJ 08608

David R. Adams, Esq.  
789 E. Lancaster Ave., Suite 220  
Villanova, PA 19085

As to Licensee:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: MRPHL028903  
Cell Site Name: Trenton Moon Channel (NJ)  
Fixed Asset No.: 14635499  
1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

With copies to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site #: MRPHL028903  
Cell Site Name: Trenton Moon Channel (NJ)  
Fixed Asset No.: 14635499  
208 S. Akard Street

Dallas, TX 75202-4206  
New Cingular Wireless PCS, LLC  
Attn: Lease Administration – Mail Drop 370  
Re: Cell Site #: MRPHL028903  
Cell Site Name: Trenton Moon Channel (NJ)  
Fixed Asset No.: 14635499  
200 North Warner Road  
King of Prussia, PA 19406

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

28. **Binding Agreement.** This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns (when allowed to be assigned) of the parties hereto.

29. **Condemnation.** If the whole of the Parcel or such portion thereof as will make the Parcel unusable for the purposes herein licensed as determined in Licensee's reasonable discretion, are condemned by any legally constituted authority for any public use or purpose, or sold under threat thereof, then in either of said events the term hereby granted shall cease from the time when possession of the Parcel is taken by public authorities, and License Payment(s) shall be accounted for as between Licensor and Licensee as of that date on a pro-rata basis for License Payment(s) paid in advance. Any lesser condemnation shall in no way affect the respective rights and obligations of Licensor and Licensee hereunder.

30. **Property Taxes.** Licensor shall be responsible for all real estate taxes due on the Parcel, provided, however, Licensee shall pay to Licensor any and all increases in real estate and other taxes, levies or assessments and any new or additional taxes, levies or assessments with respect to the Parcel to the extent same are attributable to or result from Licensee's Improvements or Licensee's activities on the Parcel. Licensee shall be solely responsible for all taxes, levies and assessments due to or on Licensee's Improvements on the Parcel.

31. **Governing Laws.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State where the Licensed Premises are located, without regard to the provisions on conflict of laws.

32. **Modification.** This Agreement shall not be modified, amended or changed in any respect except in writing duly signed by the parties hereto, and each party hereby waives any right to amend this Agreement in any other way.

33. **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the License may be terminated by either party on 10 business days prior written notice to the other party hereto.

34. **Estoppel.** Either party shall, from time to time, on not less than 45 days prior request by the other, execute, acknowledge and deliver a written statement certifying that this Agreement is unmodified and in full force and effect, or that the License is in full force and effect as modified and listing the instruments of modification; the dates to which License Payment(s) have been paid; and whether or not to the best knowledge of the party delivering the written statement the other party is in default hereunder, and if so, specifying the nature of the default. It is intended that any such statement may be relied upon by the requesting party's prospective purchaser, mortgagee or permitted assignee.

35. **Waiver.** No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

36. **Agency.** Licensee agrees that, if any work or operation contemplated by this Agreement shall be performed by a third party at Licensee's request, then any act or omission of such third party shall be deemed and considered an act of Licensee.

37. **Exhibits.** The Exhibits attached hereto and made a part hereof are a part of this Agreement as if fully set forth herein. All references herein to sections, subsections, clauses, exhibits and schedules shall be deemed references to such parts of this Agreement, unless the context shall otherwise require.

38. **Authority.** Licensors represent that Licensors have the right, power and authority to enter into, execute and deliver this Agreement. Licensee represents that Licensee has the full right, power and authority to enter into, execute and deliver this Agreement. The undersigned individuals represent that they have the right, power and authority to bind Licensee.

39. **Jury Trial.** Licensors and Licensee hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way connected with this Agreement, their relationship as Licensors and Licensee, Licensee's use and occupancy of the Licensed Premises, and/or any claim of injury or damage. The relationship of the parties shall be that of licensors and licensee and not that of landlord and tenant.

40. **Final Agreement.** This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated into this Agreement, shall be binding on any of the parties. The date of this Agreement shall be the day upon which it becomes fully executed by all parties.

41. **Confidentiality.** Licensee agrees to keep confidential all terms and provisions of this Agreement. Accordingly, Licensee agrees not to use or disclose, directly or indirectly, any information which in any way relates to this Agreement and to keep and hold as confidential any and all information concerning or in any way relating to this Agreement and shall not, during or after expiration of the term, release or disclose any such information without prior written consent, except as might be required pursuant to a court order requiring such release or as may otherwise be required by law, regulation, governmental or public utility commission regulation or requirement. In the event that Licensee is required in any judicial or government proceeding to disclose any such information, Licensee will give Licensors prompt written notice of the request, to the extent permitted by law, so that Licensors may seek a protective order or other form of protection for such information. Licensee will reasonably cooperate with Licensors in obtaining a protective order and/or appropriate protection for such information. The parties acknowledge and agree that due to the nature of this obligation, any breach of this provision would cause irreparable harm to Licensors for which damages are not an adequate remedy and that Licensors shall therefore be entitled to equitable relief in addition to all remedies otherwise available at law or pursuant to the provisions of this Agreement.

42. **Title to Licensee's Improvements.** Title to Licensee's Improvements shall be held by Licensee. Licensee has the right to remove all of Licensee's Improvements at its sole expense on or before the expiration or termination of this Agreement. Licensors acknowledge that Licensee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Licensee's Improvements (the "Collateral") with a third-party financing entity and may in the future enter into additional financing arrangements

with other financing entities. In connection therewith, Licensor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory lien; and (iii) agrees that any claim that Licensee may have on the Collateral shall be subordinate to that of any financial lender of Licensee. Notwithstanding anything to the contrary contained herein, nothing shall prohibit Licensor from pursuing any contractual rights it may have against Licensee in the event of Licensee default.

43. **No Recording.** Licensee shall not record or file this Agreement in any office or place of public record.

44. **Time of Essence.** Time is agreed to be of the essence of each and every obligation, duty and responsibility of Licensee hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals by persons authorized to execute this agreement, the day and year first above written.

ATTEST:



WITNESS:

\_\_\_\_\_

LICENSOR:


CITY OF TRENTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
W. Reed Gusciora  
Mayor  
2-7-2020

LICENSEE:

NEW CINGULAR WIRELESS PCS LLC

By: AT&T Mobility Corporation

Its: Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
Christopher J. Gehlhaus  
Sr. Real Estate & Constr. Mgr.  
AT&T Mobility Services, LLC  
1/22/2020



LIST OF EXHIBITS

Exhibit A	Parcel
Exhibit B	Plans of Permitted Improvements





# EXHIBIT B

## PLANS OF PERMITTED IMPROVEMENTS

