



City of Annapolis

Signature Copy

Ordinance: O-3-22

160 Duke Of Gloucester
Street
Annapolis, MD 21401

File Number: O-3-22

New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation - Lease Agreement -
For the purpose of approving the lease for certain City-owned property within the City of Annapolis between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation and the City of Annapolis; and matters generally relating to said Lease Agreement.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 3-22

Introduced by: Mayor Buckley

**Referred to
Rules and City Government Committee
Economic Matters Committee**

AN ORDINANCE concerning

New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation

FOR the purpose of approving the lease for certain City-owned property within the City of Annapolis between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation and the City of Annapolis; and matters generally relating to said Lease Agreement.

WHEREAS, the City owns, maintains and operates utility poles, street light poles and other structures and buildings; and

WHEREAS, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation is seeking permission from the City to use the Structures to support those small-cell antennas limited in size to no larger than 48 inches tall and 28 inches wide, remote radio heads, cables, appurtenant power lines and cables, aerial and underground communications cables, and other appurtenant communications equipment with each Structure's specifics provided in a site supplement in a form set forth in Attachment A attached hereto and incorporated herein for communications purposes in the area of the City of Annapolis; and

WHEREAS, the City is willing to lease the structures to New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation for the purposes described and in accordance with the terms

and conditions set forth in the Lease Agreement attached hereto and incorporated herein;
and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the lease.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Lease Agreement, a copy of which is attached hereto and made a part hereof, between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation and the City of Annapolis for the lease of certain municipal property, is hereby approved and authorized.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that in accordance with Article III, Section 8 of the Charter of the City of Annapolis, the proposed lease of City-owned property will better serve the public need for which the property was acquired.

SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

EXPLANATION

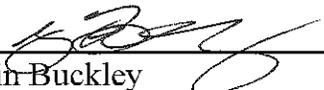
~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates matter added to existing law.

ADOPTED this 28th day of February, 2022.

Aye: 9 Mayor Buckley, Alderwoman Tierney, Alderwoman O'Neill, Alderwoman Pindell Charles, Alderwoman Finlayson, Alderman Schandelmeier, Alderman Gay, Alderman Savidge and Alderman Arnett

THE ANNAPOLIS
CITY COUNCIL



Gavin Buckley

Date 4/5/22

ATTEST



Regina C. Watkins-Eldridge, MMC

Date 4/5/22

CITY OF ANNAPOLIS SMALL CELLS MASTER LEASE AGREEMENT

THIS SMALL CELLS MASTER LEASE AGREEMENT ("Agreement") is made this _____ day of _____, 20____, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City"), and New Cingular Wireless PCS, LLC, 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, Georgia 30319, a Delaware limited liability company (collectively, the "Lessee").

WHEREAS, the City owns, maintains and operates utility poles, street light poles and other structures/buildings (each a "Structure" and collectively the "Structures"); and

WHEREAS, the Lessee is seeking permission from the City to use the Structures to support those small-cell antennas limited in size to no larger than 48 inches tall and 28 inches wide, remote radio heads, cables, appurtenant power lines and cables, aerial and underground communications cables, and other appurtenant communications equipment (collectively, the "Facilities"), with each Structure's specifics provided in a site supplement in a form set forth in Attachment A attached hereto and incorporated herein (each a "Site Supplement"), for communications purposes in the area of the City of Annapolis; and

WHEREAS, the City is willing to give the Lessee permission to use the Structures, and access the Structure pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these premises and the terms stated below, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Contingency.

a. This Agreement is contingent upon the Lessee submitting detailed engineered preliminary plans to the City specifying the Lessee's proposed construction and installation of its Facilities on one or more of the Structures (the "Plans"), in conformance with the Annapolis Small Cell System Guidelines (the "Guidelines"), attached hereto and incorporated herein as Attachment B, and the Lessee's proposed use and operation of its Facilities. The Plans for each Structure shall be finalized and approved by the City, as defined herein, prior to any construction or installation by the Lessee of the Facilities for that Structure. The City shall approve or reject such submitted Plans, and grant or deny any other Governmental Approvals (as defined below) under the control of the City, within sixty (60) calendar days of the City's receipt of those Plans. In the event of rejection of any Plans or denial of a City Governmental Approval, the City shall provide a written explanation to the Lessee of the basis for the rejection or denial. The Lessee shall not modify any of the approved Plans without the City's prior written approval. All approved Plans shall be physically included as an exhibit to the Site Supplement for each Structure.

b. It is understood and agreed that the Lessee's ability to use the Structures shall be contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State, Local or City authorities, and as further described in Paragraph 4 of this Agreement, as well as satisfactory structural analysis that will permit Lessee use of the Structures as set forth in Paragraph 6 of this Agreement. The City shall reasonably cooperate with the Lessee in its effort to obtain such Governmental Approvals. In the event that (1) any applications for such Governmental Approvals should be finally rejected; (2) any Governmental Approval issued to the Lessee is canceled, expires, lapses, or is otherwise withdrawn or

terminated by the applicable governmental authority; (3) the Lessee determines that such Governmental Approvals may not be obtained in a timely manner; (4) the Lessee determines that any structural analysis is unsatisfactory; (5) the Lessee determines that the Structure are no longer technically or structurally compatible for its use; or (6) the Lessee determines that the use of the Structures is obsolete or unnecessary, the Lessee shall have the right to terminate this Agreement upon sixty (60) calendar days prior written notice to the City.

c. The City shall give the Lessee reasonable access to the Structures and the properties on which the Structures are located for the purposes of undertaking, at its sole cost and expense, any necessary tests, studies, surveys and inspections relating to the proposed construction, installation, use and operation of its Facilities on the Structure.

d. If the Lessee determines that it is unable to use the Structure for its Facilities, the Lessee shall restore any areas of the Structures and any related property altered by reason of tests, studies, surveys and inspections to their prior condition, and this Agreement shall be void and shall not go into effect.

2. Term.

a. The initial term ("Initial Term") of this Agreement shall commence upon the full execution of this Agreement (the "Commencement Date"), and shall end on June 30th, 2031.

b. Provided that the Lessee is not in breach or default of this Agreement beyond any applicable notice and cure period hereunder, the Lessee shall have the option to renew this Agreement for up to four (4) additional five (5) year terms (each a "Renewal Term"). Each Renewal Term shall begin on July 1st and end on June 30th of the applicable years to coincide with the City's fiscal year. The Lessee's right to renew shall be deemed requested and exercised automatically unless the Lessee gives the City written notice of its election not to renew not later than six (6) months prior to the expiration of the then Initial or Renewal Term. The Initial Term and all applicable Renewal Terms shall be referred to as the "Term."

c. The initial term for each Site Supplement (each a "Site Term") shall commence on the date of the Site Supplement and shall be for a term of ten (10) years. Each Site Term shall be automatically extended for three (3) successive five (5) year terms unless either party notifies the other party in writing of its intent not to renew that Site Term at least thirty (30) calendar days prior to the expiration of the Site Term, or any extension thereof. Notwithstanding anything herein, after the expiration or earlier termination of this Agreement, the terms and conditions of a Site Supplement which was approved during the Term of the Agreement shall survive and remain in full force and effect until the expiration or earlier termination of such Site Supplement.

3. Rent and Rental Escalations.

a. During the Initial Term and any Renewal Term of this Agreement and/or all applicable Site Terms, the Lessee shall pay to the City a fiscal yearly base rent ("Rent"), due and payable on July 1st of each fiscal year, commencing on the Commencement Date and prorated for any partial fiscal year. The Rent shall be delivered to the City's Office of Finance at 160 Duke of Gloucester Street, Annapolis, Maryland 21401 or to such other place as the City may from time to time determine. Notwithstanding anything herein to the contrary, the parties acknowledge that Lessee's delivery of the first fiscal year's installment of Rent may not occur until thirty (30) calendar days after the Commencement Date.

b. The Rent shall be in the amount of Two Hundred Seventy Dollars (\$270.00), per year per Site Supplement.

c. The Rent shall be in addition to all other costs and expenses which the Lessee is required to pay or which the Lessee otherwise pays pursuant to this Agreement.

4. Permits and Approvals.

a. After the full execution of this Agreement and submission of the Plans described in Paragraph 1(a), Lessee shall promptly file applications for all Governmental Approvals, at its sole cost and expense, including but not limited to zoning approvals and permits required for the construction and installation of the Facilities and/or the use of the Structure for which Plans were submitted to the City.

b. After the Lessee has obtained all necessary Governmental Approvals, the Lessee, at its sole cost and expense, may construct and install the Facilities in accordance with the Plans, the Guidelines, the Governmental Approvals, and otherwise pursuant to all City laws and regulations and any other applicable laws and regulations.

c. All construction, installation, use and operation of the Facilities shall meet all applicable rules, regulations and codes of the Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA"), the State of Maryland and the City.

d. The Lessee shall comply with all FAA authorizations and its FCC license with respect to supporting structures and lighting requirements as the same specifically relate to Lessee's use and installations on the Structures; however, the City acknowledges that it is solely responsible for ensuring that the Structures comply with all applicable laws and regulations that are not specifically related to Lessee's use thereof.

e. At such time that the City indicates, the Lessee shall contract with a licensed inspector and/or consultant ("Consultant"), designated by the City for review and prior approval by the City and the Consultant of the Plans and other permit plans prepared or provided by the Lessee for all Governmental Approvals, and for inspection of the Facilities, including but not limited to welding, seams and paint. The Lessee shall be responsible for all reasonable and non-discriminatory costs and expenses associated with the Consultant, and upon completion of the Facilities inspection by the Consultant, the Lessee shall comply with all recommendations of the Consultant within ninety (90) calendar days, weather permitting. The Facilities shall further comply with all requirements specified in the Guidelines.

f. The Lessee shall provide copies of any additional plans necessary to satisfy all requirements for Governmental Approvals.

g. The Lessee shall install and maintain, at its sole cost and expense, any landscaping set forth in the Plans, as may be modified by any Governmental Approvals.

5. Permission to Use.

a. Upon the City's final approval of the Lessee's Plans, the approval of all necessary Governmental Approvals, and compliance with all other requirements under Paragraph 4 of this Agreement, the City shall permit the Lessee to construct and install Facilities on the Structures for the purposes and under the terms set forth in this Agreement.

b. The Lessee accepts the applicable Structures in the condition in which they may then be, and waives and releases any right or claim against the City arising out of the condition of the Structure at such time.

c. The Lessee's construction and installation of the Facilities shall be included in and pursuant to the Plans and the Guidelines, and all such Facilities shall be expressly subject to the City's prior written approval.

d. Notwithstanding anything herein to the contrary, Lessee may replace any of its then existing Facilities with like or similar equipment without City approval, provided that the replacement Facility does not increase the loading on the Structure, create any substantial or material interference with any other communication system or equipment owned or operated by or on behalf of the City or any other governmental agency, or alter or change the previously approved space utilized on the Structure.

6. Use of Structure and Property.

a. The Lessee, at its sole cost and expense, shall be permitted to:

1. Access a Structure as is reasonably required to construct, install, operate, maintain, and repair the Facilities, including those Facilities to be constructed or installed from the Structure over, across and through the property upon and to the nearest available utility poles or sources **but only to the extent** described in the Site Supplement the approved Plans attached thereto. The Lessee shall provide reasonable notice to the City if the Lessee's access will disrupt use of the surrounding area by the City, or any pedestrians and vehicles on the roadway.

2. Use any existing driveway, approach, or access road designated by the City for ingress and egress to and from the Structure for purposes related to this Agreement, as applicable.

3. Subject to the City's prior written approval and in accordance with the Plans and the Guidelines, make reasonable and appropriate alterations to the Structure in order to accomplish the construction, installation, operation maintenance, repair or renovation of the Facilities.

b. The Lessee shall not be permitted to place any sign, advertisement, or other notice on or about the Structure which identifies the Lessee in any way, except as may be required by applicable law.

c. No materials shall be used in the installation of the Facilities that shall cause corrosion, rust or deterioration of the Structure or its appurtenances.

d. Except as otherwise required by applicable law, all antenna(s) on the Structure shall be identified by a marking fastened securely to its bracket on the Structure, and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

e. Prior to installation of any Facilities, the Lessee shall notify the City of any existing cables so that the City can contact the responsible party to remove any excess and/or unnecessary cabling. The Lessee shall perform all work in a good and workmanlike manner, and in such a manner as to not interfere with any aspect of City property or the operation of the City generally.

f. The Lessee shall maintain the Facilities in proper operating condition and maintain its use of the Structure in a condition satisfactory to the City as to appearance and safety.

g. The Lessee's Facilities shall meet the noise ordinances of the City. Upon oral or written notice from the City that any of the Facilities violate such ordinance, or that otherwise violate any other law, the Lessee shall take all actions required to correct and reduce the noise to the satisfaction of the City in order to comply with such ordinance or law. If, within ten (10) business days of receipt of such notification, the Lessee is unable to bring the noise to satisfactory levels and/or within legal limits, the Lessee shall immediately remove or replace the Facilities or any part thereof that is causing the noise, or if such is not effective, the City may terminate this Agreement upon thirty (30) calendar days prior written notice to the Lessee.

h. The Lessee, at its own cost and expense, shall be responsible for acquiring all electrical or other utilities it requires to construct, install, use and operate the Facilities, and shall ensure that all such utilities are separately metered from the City's utilities. The Lessee shall pay all charges for all utilities assessed to it directly to the applicable utility provider(s). The Lessee, at its sole cost and expense, shall be responsible for any expansion or improvement of the utility services needed for the Facilities, with the prior written approval of and under the supervision of the City, such approval not to be unreasonably withheld, conditioned or delayed.

j. The Lessee, at its sole cost and expense, shall be responsible for any backup emergency power system it may require for the Facilities, with the prior written approval of and under the supervision of the City, such approval not to be unreasonably withheld, conditioned or delayed. The City shall not be liable in damages or otherwise to the Lessee for any failure or interruption of any utility service being furnished to the Facilities, and no such failure or interruption shall entitle the Lessee to terminate this Agreement, except to the extent such damages are caused by the gross negligence or willful misconduct of the City.

k. The Lessee shall notify the City immediately upon the receipt of any violations, notices of interference, and/or other notices from the FCC.

7. Temporary Relocation.

a. The Lessee shall be responsible for the removal of the Facilities at any time the City requests to allow the City to perform maintenance on the Structure. The City shall give the Lessee at least one hundred eighty (180) calendar days prior written notice of when such maintenance will begin and when the Facilities need to be removed, except in the case of an emergency, in which the City shall provide as much notice as is reasonably practical under the circumstances. The City will assist the Lessee with identifying a relocation location with substantially similar signal coverage for the Facilities as that of the original Structure and will expedite the issuance of the approvals necessary to facilitate the relocation of the Facilities. The City agrees to use reasonable efforts to minimize any requirement for Lessee's removal of its Facilities during any maintenance work on the Structure.

b. If the Lessee wants to install a temporary communications site for the duration of the maintenance or temporary relocation period, the Lessee shall obtain the City's prior written approval for its use and location (which approval shall not be unreasonably withheld, conditioned or delayed), and obtain in advance any permits and Governmental Approvals required for a temporary communications site. An approved temporary communications site may consist of a portable cell site with a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer, or other installation approved by the City. The City reserves the

right to deny approval of a temporary communications site on the Property if the same would unreasonably impact the City's operations or the maintenance of the Structure.

c. Upon the completion of any maintenance, repair or similar work by the City during any temporary relocation period, the Lessee will be permitted to return to its original location on the Structure.

8. Studies.

At any time during the Initial Term and any Renewal Term of this Lease, the City, in its sole reasonable discretion, when legitimate concerns arise regarding the Lessee's use, operation or maintenance of its Facilities at the Structure or on the Property, may require that interference studies be performed at the Lessee's sole expense with emphasis on potential radio frequency interference issues related to the Lessee's use and operation of the Facilities on the Structure and/or the Property. Such studies shall include an assessment of radio frequency interference with public safety radio communications, particularly transmission and reception, which assessment may involve Federal, State, Local and/or City government agencies. The Lessee, at its sole cost and expense, shall resolve any substantiated interference or other feasibility issues promptly to the City's reasonable satisfaction after a written direction to do so by the City.

9. Assumption of Risk.

The Lessee shall assume any and all risks of every nature, type and description associated directly or indirectly with its access to or presence upon the Structure and its construction, installation, use and operation of the Structure, including the access or presence of its employees, contractors, subcontractors, agents and representatives; provided, however, Lessee does not assume any risk associated with the negligence or willful misconduct of any City employee, agent or contractor.

10. Ownership and Removal of Facilities.

a. Throughout the Initial Term and all Renewal Terms of this Agreement, the Lessee shall own all of the Facilities. The City agrees and acknowledges that all of the Facilities shall remain the personal property of the Lessee, and the Lessee shall have the right to remove the Facilities, or any portion thereof, at any time during this Agreement, whether or not said items are considered fixtures and attachments to real property under applicable laws.

b. Upon expiration or termination of this Agreement or a Site Supplement, the Lessee shall, within one hundred eighty (180) calendar days and at its own cost and expense, dismantle and remove all of the Facilities from the Structures. Any such Facilities or other property not removed at the expiration of this Agreement in accordance with the preceding sentence and Lessee's continued failure to remove the same within thirty (30) calendar days after receipt of written notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Lessee, without increasing the City's liability to the Lessee, and for any disposition of it as the City decides to make.

c. Upon expiration or termination of this Agreement or a Site Supplement, the Lessee, at its sole cost and expense, shall fully restore any part of the Structures and the properties that have been damaged, modified or altered by the Lessee to the condition which

existed on the date of the execution of this Agreement, reasonable wear and tear and damage due to casualty excepted.

d. The Lessee shall have no right to retain possession of the Structure, or any part thereof, beyond the expiration of that removal period set forth in Paragraph 10(b) above.

11. Maintenance and Repair.

a. The Lessee, at its own cost and expense, shall at all times during the Initial Term and any Renewal Term of this Agreement maintain and repair the Facilities in a proper and safe condition, and shall repair any damage to the Structure and/or the property where the Structure is located caused by any waste, misuse, actions, omissions, or neglect by the Lessee, its employees, contractors, subcontractors, agents or representatives.

b. The Lessee shall leave no debris, trash or garbage on the Structure or the associated property during the Initial Term and any Renewal Term of this Agreement.

12. Taxes.

a. The Lessee shall be responsible for the payment of any personal property, real estate taxes (including any increase thereof), assessments, or charges owed in connection with the Structure, within thirty (30) calendar days of documentation provided by the City, and which is the result of the Lessee's use of the Structure, and/or the installation, maintenance, and operation of the Lessee's Facilities or other improvements, and any sales tax imposed on the Rent (except to the extent that the Lessee is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located).

b. If Lessee does not make such payment(s) within the applicable time periods and the City does, the Lessee shall reimburse the City within sixty (60) calendar days of the City's written request.

13. Environmental.

a. At all times during the Initial Term and any Renewal Term of this Agreement, the Lessee shall not use, generate, handle, store or dispose of any hazardous material in, on, under, upon or affecting the Structure, in violation of any applicable law or regulation, and shall not permit others to do so.

b. "Hazardous material" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation.

14. Interference.

a. The Lessee shall not construct, install, use or operate any of its Facilities on the Structure which interferes in any manner or to any degree, including through radio frequency interference, with any communication system or equipment owned or operated by or on behalf of the City or any other governmental agency.

b. In the event of any such interference and upon notification by the City, which shall, in all instances, be made to the Lessee's emergency contact hotline at [(____) ____-____], the Lessee shall promptly dispatch authorized representatives to inspect and test the Lessee's Facilities. The City may, but is not required to, perform its own technical evaluation of the Lessee's Facilities to determine the cause of the interference. If after the Lessee and the City evaluate the cause of the interference, the City reasonably determines that the Lessee is causing the interference, then the Lessee shall have twelve (12) hours to cease all operation of its interfering Facilities and take all corrective actions which the City reasonably requires for interference with a City Structure. The Lessee shall not recommence operations until the Lessee's Facilities no longer interfere with the communication system or equipment of the City or other governmental agency and such non-interference is documented to the City's reasonable satisfaction. If the Lessee fails to do so, the City may take all reasonable actions with respect to the Facilities to cause the cessation of the interference and the Lessee shall be responsible for all of the City's costs and expenses, including wages and overtime wages or contractual expenses for those involved. Under these circumstances of interference, there shall be no abatement of the Rent for any period when the Lessee is unable to operate its communication systems or equipment, and the Lessee shall not be entitled to any damages from the City for any period of time that the Lessee was not able to operate its Facilities, through and including the date on which it recommences operations, and hereby releases all such claims and actions for damages.

c. The Lessee's failure, upon the City notification as set forth in Paragraph 14(b) above, to immediately cease operation of any communication system or equipment that interferes with any communication system of the City or other governmental agency shall constitute a material breach of this Agreement for which the City is authorized, without any liability to Lessee, to immediately power down Lessee's equipment in order to prevent any further interference.

d. In addition to and not in limitation of other obligations set forth in this Paragraph, the Lessee shall comply with all applicable Federal laws, rules and regulations, whether adopted before or after the date of this Agreement, the purpose of which is to avoid interference with the transmission or reception of public safety communication.

e. The Lessee acknowledges that this Agreement does not preclude the placement of other communication systems or equipment on the Structure (other than the Facilities) by the City or by other licensees or lessees of the City, and that as of the date of the execution of this Agreement, such other communications systems or equipment may be placed on the Structure. The Lessee shall cooperate with the City concerning the placement, use and operation of such other communications systems or equipment not inconsistent with this Agreement, provided that such communication systems and equipment of others do not interfere with the Lessee's Facilities. After the placement of any such other communication systems or equipment on the Structure, the Lessee shall not alter its Facilities, in placement or operation, in a manner that interferes with such other communication systems or equipment, in placement or operation.

f. The City will not, nor will the City permit its employees, authorized agents, or independent contractors to cause interference with the Lessee's existing Facilities, or the Lessee's use of any Structure for which there is a Site Supplement. If the Lessee reasonably determines that interference as described herein is occurring, then the City will meet and confer with the Lessee within five (5) business days of the City's receipt of notice of interference from the Lessee, and otherwise diligently work in good faith with the Lessee to determine the root

cause of the interference and to develop workable solutions to resolve the interference in a mutually acceptable manner.

15. Access.

The Lessee shall have free access on foot or motor vehicle, including trucks, but at reasonable times and in a reasonable manner to maintain, operate, repair, and replace the Facilities. Lessee shall provide reasonable notice to City if Lessee's access will disrupt normal use of the surrounding area by pedestrians and vehicles on the roadway. Access to the Structure for the purpose of constructing, installing, repairing, maintaining, replacing, using and operating the Facilities must be in accordance with the Plans, the Guidelines, and this Agreement.

16. Indemnification.

a. The Lessee shall indemnify, defend and hold the City and its elected officials, appointees, directors and employees harmless, in their official and individual capacities, for injuries or damages and from all claims, complaints, suits and other actions seeking injuries or damages, to persons or property, including but not limited to loss of use of the Structure, which may arise out of: (1) the Lessee's activities at or on the Structure; (2) the construction, installation, repair, maintenance, replacement, use and operation of its Facilities; (3) the use of the Structure; and (4) any negligent act or omission by the Lessee, its employees, contractors, subcontractors, agents or representatives in connection with this Agreement; excepting, however, in all instances, to the extent any of the aforesaid arise out of the negligent acts or willful misconduct of the City or its elected officials, appointees, directors and employees.

b. The City may assert all immunities to which it and its elected officials, appointees, directors and employees are entitled in all such claims, complaints, suits and actions, and shall be entitled to participate in its own defense.

c. The Lessee shall reimburse the City, within sixty (60) calendar days after invoicing for such reimbursement, for any damage to the Structure and associated property caused by the negligence or willful misconduct of the Lessee, its employees, contractors, subcontractors, agents or representatives.

d. Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable for consequential, incidental, punitive, exemplary or indirect damages suffered by the other party or by any customer or any purchaser of such party or any other person, for lost profits or other business interruption damages, whether by virtue of any statute, in tort or in contract, except that the express indemnification obligations made by the parties in this Paragraph 16 of this Agreement shall still apply.

17. Insurance.

a. The Lessee, at its sole cost and expense, shall at all times during the Initial Term and any Renewal Term of this Agreement maintain in effect a Workers' Compensation insurance policy which covers Lessee and its employees while working at the Structure and the Property. The Lessee shall provide the City annually with a copy of its Workers' Compensation Certificate of Compliance.

b. The Lessee, at its sole cost and expense, shall at all times during the Initial Term and any Renewal Term of this Agreement maintain in effect a personal injury and property

damage commercial general liability insurance policy adequate to protect the City against liability for injury or death to any person or damage to any property caused, in whole or in part, by: (1) the Lessee's use of the Property, the Structure and its Facilities, (2) the condition of the Structure and the Property, and (3) any driveway, approach and access road leading to the Structure, with coverage in an amount of One Million Dollars (\$1,000,000.00) combined single limit each occurrence and Three Million Dollars (\$3,000,000.00) general aggregate. Such policy shall include the City and its elected officials, appointees, directors and employees as additional insureds by endorsement as their interests may appear as respects this Agreement excluding workers' compensation and employer's liability. Lessee shall provide at least thirty (30) calendar days advance written notice from either the insurer or the Lessee to the City of cancellation of any required coverage that is not replaced. A Certificate of Insurance, including the City and its elected officials, appointees, directors and employees as additional insured as their interest may appear excluding worker's compensation and employer's liability shall be filed with the City Attorney annually.

18. Sale and Assignment.

a. This Agreement shall not be sold by the Lessee.

b. This Agreement shall not be assigned by the Lessee without the City's prior written consent, except this Agreement may be assigned or transferred by the Lessee without any approval or consent of the City (but by prior written notice to the City) to Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the FCC in which the Structures are located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of the Lessee or transfer upon partnership or corporate dissolution of the Lessee shall constitute an assignment hereunder. No assignment or transfer by the Lessee shall release the Lessee from its primary liability or obligations under this Agreement.

19. Non-Exclusive.

a. Subject to Paragraphs 14(e) and 19(b) of this Lease, nothing in this Lease shall be construed to preclude the City from granting permission to any other party, including any other communications entity, to use the Structure for any purpose, including but limited to use as a communications system site.

b. The City shall incorporate into each agreement related to the Structures into which it enters with any other party subsequent to this Agreement a covenant ensuring that the rights allowed by the subsequent agreement shall not interfere with the Lessee's rights pursuant to this Agreement.

20. Termination.

a. *Termination for Default or Breach.*

1. If the Rent or any other payment due from the Lessee pursuant to this Agreement remains unpaid thirty (30) business days after becoming due and payable, the Lessee shall be in default of this Agreement and shall pay a late charge upon the unpaid balance equal to one and one-half percent (1.5%) per month until such unpaid balance is paid in full.

2. If the Lessee fails or neglects to perform and comply with any one of the terms of this Agreement or of any permit or Governmental Approval required pursuant to this Agreement, and such failure or neglect continues for more than thirty (30) calendar days after written notice, or such other period as the City may determine in its sole discretion to be reasonably required to cure with exercise of due diligence, after written notice from the City specifying the lack of compliance, the Lessee shall be in default of this Agreement and the City, at its option, may automatically terminate the right to use the specific Structure to which the default pertains, or in the case of a default pertaining to all Structures, this Agreement, and pursue all available legal remedies. Notwithstanding the above, no default shall exist if the Lessee has commenced efforts to cure any failure or neglect within the provided thirty (30) calendar day period and exercises continued due diligence until their completion.

b. *Termination for Other Reasons.* In addition to termination provisions elsewhere in this Agreement, the right to use a specific Structure may be terminated and be of no further force and effect as follows:

1. If a Structure is completely destroyed or destroyed to a degree sufficiently substantial so that the Lessee's operations cannot be restored within one hundred eighty (180) calendar days, and the Lessee elects to terminate this Agreement by written notice to the City (it being expressly acknowledged and agreed that the City shall have no obligation, whether or not the Lessee elects to terminate this Agreement, to rebuild or restore the Structure in any manner or to any extent for the Lessee's benefit).

2. If the Structure is removed from the City's other system and the City elects to dismantle the Structure as a result thereof; provided that the City shall provide the Lessee with not less than twelve (12) months written notice prior to termination.

3. Upon any determination by and in the sole discretion of the City that any interference pursuant to Paragraph 14 of this Agreement is permanently unresolvable; provided that Lessee has been provided a reasonable opportunity to demonstrate that either the Lessee's Facilities are not the cause of such interference or that such interference can be permanently and completely resolved by modifications to the Lessee's Facilities.

4. If all or any part of the property containing the Structure, or if all or any part of the parcel or access right-of-way to the Structure is taken by eminent domain or other action by jurisdictions having the legal right to take said lands, and if said taking in the reasonable opinion of the Lessee renders the Structure unusable for its intended purpose under this Agreement.

c. In the event that the City determines that: (1) the City requires the use of the exterior of the Structure and the City's use thereof would be incompatible with Lessee's maintenance or operation of the Lessee's Facilities, or (2) provided the same is consistent with applicable laws, the City no longer allows the use of the exterior of the Structure by third parties such as Lessee, the City may terminate the right to use a specific Structure at any time by providing prior written notice to the Lessee equal to twenty percent (20%) of the remaining term of the Agreement, but in no event less than at least six (6) months prior notice; provided, however, that the City may not exercise such right to terminate this use of such Structure unless it is also then terminating the leases of any other parties that have communications equipment installed on the exterior of the Structure.

d. Any termination of this right to use a Structure, whether pursuant to this Paragraph 20 or elsewhere under this Agreement, shall not discharge the Lessee from any

obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination.

e. All Rent and other payments paid prior to any specified termination date, whether pursuant to this Paragraph 20 or elsewhere under this Agreement, shall be retained or prorated by the City, in the City's sole discretion.

f. Nothing in this Paragraph 20 shall be construed to limit any other remedy or enforcement procedure the City may have as a result of any default or breach of this Agreement.

21. Representations and Warranties.

The Lessee represents and warrants to the City that:

a. The Lessee is a limited liability company organized under the laws of the State of Delaware, qualified to do business in the State of Maryland, and authorized to conduct the business in which it is engaged and as described in this Agreement.

b. The Lessee is authorized to execute, deliver and perform this Agreement.

c. The Lessee shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Agreement.

d. There are no actions, suits, or other claims pending against the Lessee or which might adversely affect the Lessee's right to enter into or perform under this Agreement.

e. The representations set forth in this Agreement shall be true and valid throughout the Initial Term and all Renewal Terms.

22. Access to Records.

a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Lessee shall make available to and allow inspection by the City, its employees or agents, of all records, information and documentation of the Lessee related to annual inspections, as-builts of any work undertaken on a Structure including replacements of like or similar items, and reports of interference incidents as relates to or as required by this Agreement ("Records").

b. The Lessee shall maintain all Records for a period of at least one (1) year after the date of termination of this Agreement including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Lessee shall do so until one (1) year after final adjudication of such litigation or settlement of claims.

23. Remedies Cumulative and Concurrent.

No remedy provided by this Agreement or reserved to the City is intended to be exclusive of any other remedies provided for in this Agreement, and each such remedy shall be cumulative, and shall be in addition to every other remedy given under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the

City shall be concurrent and may be pursued separately, successively or together against the Lessee, and every right, power and remedy given to the City may be exercised from time to time as often as may be deemed expedient by the City.

24. Waiver of Remedies for Breach or Default.

No failure or delay by the City to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power or remedy consequent upon a breach or default thereof, shall constitute a waiver of any such term, condition or covenant or of any such breach or default, or preclude the City from exercising any such right, power or remedy at any later time or times.

25. Independent Contractor Status.

Nothing contained in this Agreement shall be construed to constitute the Lessee as an agent, representative or employee of the City, or to create any relationship between the parties other than leaser and lessee.

26. Binding Effect.

The terms of this Agreement shall be binding on and enforceable against the parties and their respective successors and assigns.

27. Governing Law.

a. In all actions arising from this Agreement, the laws of the State of Maryland, and where applicable, federal law, shall govern, and the venue for all actions initiated pursuant to this Agreement shall be exclusively the Courts of Anne Arundel County, Maryland and applicable federal courts.

b. The parties waive jury trial in all actions initiated pursuant to this Agreement.

28. Recitals.

The recitals of this Agreement are incorporated into this Agreement.

29. Severability.

If any of the provisions of this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected and shall remain enforceable to the full extent permitted by law.

30. Survival.

Those paragraphs in this Agreement which by their nature are intended to survive shall survive the termination of this Agreement.

31. Amendment or Modification; Order of Precedence.

a. This Agreement sets forth the entire agreement between the parties relative to the subject matter of this Agreement, the Facilities and the Structure. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. This Agreement shall not be waived, amended or modified except in writing and signed by the authorized representative(s) of both parties.

b. In the event of a conflict, the order of precedence shall be as follows, listed from highest precedence to lowest precedence:

1. Any written amendment;
2. This Agreement;
3. Any attachments to this Agreement; and
4. Any proposal or bid by the Lessee.

32. Counterparts.

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

33. Notice.

Any notice required to be delivered shall be deemed to have been received when the notice has been sent and received, refused or returned undeliverable, by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

- To the City: Director, Department of Public Works
145 Gorman Street, 2nd Floor
Annapolis, Maryland 21401
- With a Copy to: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401
- To the Lessee: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: Wireless Installation on Structures
(Annapolis, Maryland)
FA No.: _____
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319
- With a Copy to: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept. - Network Operations
Re: Wireless Installation on Structures
(Annapolis, Maryland)
FA No.: _____
208 S. Akard Street
Dallas, TX 75202-4206

34. Legislation.

This Agreement has been authorized according to the requirements of the Annapolis

City Charter by Ordinance O-3-22.

35. Force Majeure

Time periods for performance under this Agreement shall be deemed extended day for day for time lost attributable to any delay resulting from any act of God, strike, civil riot, fire, flood, material or labor shortage, restriction by governmental authority, and any other cause not within the reasonable control of the party whose performance is required under the Agreement.

36. Change of Law

In the event that any legislative, regulatory, judicial, or other action ("New Law") affects the rights or obligations of the parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Facilities on public infrastructure or in the right-of-way, that differ, in any material respect from the terms of this Agreement, then either party may, upon thirty (30) calendar days' written notice, require that the terms of this Agreement be renegotiated to conform to the New Law on a going forward basis for all existing and new Facilities installations, unless the New Law requires retroactive application. In the event that the parties are unable to agree upon such new terms within ninety (90) calendar days after such notice, then any rates contained in the New Law shall apply from the 90th calendar day forward until the negotiations are completed or a party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction. Except as provided in the proceeding, all terms in the existing Agreement shall remain in effect while the parties are negotiating.

IN WITNESS WHEREOF, it is the intent of the parties that the Lessee has signed this Agreement under seal and, further, that the parties have executed this Agreement the day and year first written above.

WITNESS:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____
[Name] (Seal)
[Title]

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR SUFFICIENT APPROPRIATIONS
AND AVAILABILITY OF FUNDS:

Joanna D. Dickinson, Director
Finance Department
Source of Funds: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
FORM OF SITE SUPPLEMENT**

This is Site Supplement, is made this _____ day of _____, 20____, between CITY OF ANNAPOLIS, MARYLAND, a municipal corporation of the State of Maryland (the "City") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (the "Lessee").

1. License Agreement for Facilities on Structures. This Site Supplement as referenced in that certain Lease Agreement for Facilities On Structures, between the City and the Lessee dated _____, 20____ ("Agreement"). The Licensee has submitted Plans pursuant to the Agreement for the Leased Site (as defined below), and the City has reviewed those Plans and the City hereby grants its approval of those Plans, this Site Supplement, and the Leased Site, subject to the terms of this Site Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site Supplement, the terms of this Site Supplement shall govern. Capitalized terms used in this Site Supplement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. The Lessee shall have the right to install and attach Facilities on, under, and above the public right-of-way owned or controlled by City, on, in and adjacent to the specific Structure as identified and described in Exhibit A attached hereto (collectively the "Leased Site"), and in accordance with the approved Plans included as part of Exhibit A.

3. Term. The Site Term of this Site Supplement shall be as set forth in Paragraph 2 of the Agreement.

4. Fee. The Fee shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Paragraph 3 of the Agreement.

5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Site Supplement to be duly executed as of the Effective Date.

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____ (Seal)
Gavin Buckley, Mayor

APPROVED FOR SUFFICIENT APPROPRIATIONS
AND AVAILABILITY OF FUNDS:

Joanna D. Dickinson, Director
Finance Department
Source of Funds: _____

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Office of Law
D. Michael Lyles, City Attorney

LESSEE: NEW CINGULAR WIRELESS PCS, LLC,
a Delaware Limited Liability Company

By: AT&T Mobility Corporation
Its: Manager

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

EXHIBITS A

Leased Site, Facility Equipment List and Plans

Lessee Facility Reference: [LESSEE TO COMPLETE]

FA / USID:

Site Name: CRAN_POLYGON NAME_NODE #

PTN / PACE:

Structure pole number: [CITY TO COMPLETE]

Structure Latitude and Longitude (Approximate): [LESSEE TO COMPLETE]

Facility Equipment List: [LESSEE TO COMPLETE]

Facility Plans: See the attached plan set dated _____ 20__ prepared by
_____ consisting of (____) page(s).

**ATTACHMENT B
GUIDELINES**