

1 **..Title**

2 **Cellco Partnership, d/b/a Verizon Wireless - Lease Agreement** – For the purpose of approving  
3 the lease for certain City-owned property within the City of Annapolis between Cellco Partnership,  
4 d/b/a Verizon Wireless and the City of Annapolis; and matters generally relating to said Lease  
5 Agreement.

6 **..Body**

7 **CITY COUNCIL OF THE**  
8 **City of Annapolis**

9  
10 **Ordinance 27-21**

11  
12 **Introduced by: Mayor Buckley**

13  
14 **AN ORDINANCE** concerning

15  
16 **Cellco Partnership, d/b/a Verizon Wireless - Lease Agreement**

17  
18 **FOR** the purpose of approving the lease for certain City-owned property within the City of  
19 Annapolis between Cellco Partnership, d/b/a Verizon Wireless and the City of Annapolis;  
20 and matters generally relating to said Lease Agreement.

21  
22 **WHEREAS,** the City owns, maintains and operates utility poles, street light poles and other  
23 structures and buildings; and

24  
25 **WHEREAS,** Cellco Partnership, d/b/a Verizon Wireless is seeking permission from the City to  
26 use the Structures to support those small-cell antennas, remote radio heads, cables,  
27 appurtenant power lines and cables, aerial and underground communications  
28 cables, and other appurtenant communications equipment for communications  
29 purposes in the area of the City of Annapolis; and

30  
31 **WHEREAS,** the City is willing to lease the structures to Cellco Partnership, d/b/a Verizon  
32 Wireless for the purposes described and in accordance with the terms and  
33 conditions set forth in the Lease Agreement attached hereto and incorporated  
34 herein; and

35  
36 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the passage  
37 of an ordinance to authorize the lease.

38  
39 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**  
40 **COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made a part hereof,  
41 between Cellco Partnership, d/b/a Verizon Wireless and the City of Annapolis for the lease of  
42 certain municipal property, is hereby approved and authorized.  
43

1 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
2 **ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the Charter of  
3 the City of Annapolis, the proposed lease of City-owned property will better serve the public need  
4 for which the property was acquired.  
5

6 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
7 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.  
8  
9

10 **EXPLANATION**

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

12 Underlining indicates matter added to existing law.  
13  
14

**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 **CELLCO PARTNERSHIP, d/b/a Verizon Wireless**, a Delaware partnership, with its principal offices located at One Verizon Way, Basking Ridge, NJ 07920 (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 perform an initial review of the Plans within ten (10) calendar days of receipt from the Lessee to determine if such Plans are complete, and the City shall notify Lessee no later than the expiration of such ten (10) calendar day period if the Plans require revisions or additional information. Thereafter, 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 be for a period of not less than ten (10) years, commencing upon the full execution of this Agreement (the "Commencement Date"), and ending on June 30<sup>th</sup>, 20[ ].

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 1<sup>st</sup> and end on June 30<sup>th</sup> 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 two (2) 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 sixty (60) calendar days prior to the expiration of the Site Term, or any extension thereof. During any Site Term, Lessee may terminate any Site Supplement at anytime and for any or no reason upon ninety (90) days notice to the City. 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 Term.

1   **3. Rent and Rental Escalations.**

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

10          b.       The Rent shall be in the amount of Two Hundred Seventy Dollars and Zero Cents  
11 (\$270.00), per year per Site Supplement.

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

14   **4. Permits and Approvals.**

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

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

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

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

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

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

3 g. Subject to Lessee's receipt of all necessary Governmental Approvals and the  
4 satisfaction of the contingencies contained in Paragraph 1 of this Lessee, Lessee shall complete  
5 design, construction and installation of the Facilities no later than twelve (12) months, unless such  
6 time is extended by mutual agreement of the parties hereto. Failure of the Lessee to complete  
7 construction and installation of the Facilities pursuant to this Paragraph 4(g) shall not relieve the  
8 Lessee of its obligation to pay the Rent to the City for each fiscal year from the Commencement  
9 Date onward, and the Lessee shall not be entitled to any proration, waiver or leniency of and/or  
10 from any Rent or other payments that the Lessee is required to pay pursuant to this Lease.

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

13 **5. Permission to Use.**

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

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

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

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

30 **6. Use of Structure and Property.**

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

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

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

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

8                   b.       The Lessee shall be responsible for all review and/or inspection costs, as set forth  
9 in the City's fee schedule then in effect, incurred by the City in its review and approval of the  
10 Facilities for compliance with this Lease.

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

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

16                  e.       All antenna(s) on the Structure shall be identified by a marking fastened securely  
17 to its bracket on the Structure, and all transmission lines are to be tagged at the conduit opening  
18 where it enters any user's equipment space.

19                  f.       The Lessee shall perform all work in a good and workmanlike manner, and in such  
20 a manner as to not interfere with any aspect of City property or the operation of the City generally.

21                  g.       The Lessee shall maintain the Facilities in proper operating condition and maintain  
22 its use of the Structure in a condition satisfactory to the City as to appearance and safety,  
23 consistent with the City's then in effect standards. The City may request, no more often than  
24 annually except in the case of emergencies, that the Lessee inspect the Facilities, notify the City  
25 in writing when it does so, and provide the City with the results of the inspection in writing.

26                  h.       The Lessee's Facilities shall meet the noise ordinances of the City. Upon oral or  
27 written notice from the City that any of the Facilities violate such ordinance, or that otherwise  
28 violate any other law, the Lessee shall take all actions required to correct and reduce the noise to  
29 the satisfaction of the City, consistent with the City's then in effect standards, in order to comply  
30 with such ordinance or law. If, within ten (10) business days of receipt of such notification, the  
31 Lessee is unable to bring the noise to satisfactory levels, consistent with the City's then in effect  
32 standards, and/or within legal limits, the Lessee shall immediately remove or replace the Facilities  
33 or any part thereof that is causing the noise, or if such is not effective, the City may terminate the  
34 Site Supplement(s) associated with such Facilities upon thirty (30) calendar days prior written  
35 notice to the Lessee.

36                  i.       The Lessee, at its own cost and expense, shall be responsible for acquiring all  
37 electrical or other utilities it requires to construct, install, use and operate the Facilities, and shall  
38 ensure that all such utilities are separately metered from the City's utilities. The Lessee shall pay  
39 all charges for all utilities assessed to it directly to the applicable utility provider(s). The Lessee,  
40 at its sole cost and expense, shall be responsible for any expansion or improvement of the utility

1 services needed for the Facilities, with the prior written approval of and under the supervision of  
2 the City, such approval not to be unreasonably withheld, conditioned or delayed.

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

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

## 12 **7. Temporary Relocation.**

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

23 b. If the Lessee wants to install a temporary communications site for the duration of  
24 the maintenance or temporary relocation period, the Lessee shall obtain the City's prior written  
25 approval for its use and location (which approval shall not be unreasonably withheld, conditioned  
26 or delayed), and obtain in advance any permits and Governmental Approvals required for a  
27 temporary communications site. An approved temporary communications site may consist of a  
28 portable cell site with a cellular antenna tower and electronic radio transceiver equipment on a  
29 truck or trailer, or other installation approved by the City. The City reserves the right to deny  
30 approval of a temporary communications site on the Property if the same would unreasonably  
31 impact the City's operations or the maintenance of the Structure.

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

## 35 **8. Studies.**

36 At any time during the Initial Term and any Renewal Term of this Lease, but in no event  
37 more than once every twelve (12) months, the City, in its sole discretion, when legitimate and  
38 documented concerns arise regarding the Lessee's use, operation or maintenance of its Facilities  
39 at the Structure or on the Property, may require that studies, including but not limited to  
40 engineering analyses, be performed at the Lessee's sole expense with emphasis on potential  
41 communications and land use interference issues related to the Lessee's use and operation of



1 the Facilities on the Structure and/or the Property. Such studies shall include an assessment of  
2 the impact on public safety radio communications, particularly transmission and reception, which  
3 assessment may involve Federal, State, Local and/or City government agencies. The Lessee, at  
4 its sole cost and expense, shall resolve any interference or other feasibility issues promptly to the  
5 City's reasonable satisfaction after a written direction to do so by the City.

6 **9. Assumption of Risk.**

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

13 **10. Ownership and Removal of Facilities.**

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

19 b. Upon expiration or termination of a Site Supplement, the Lessee shall, within ninety  
20 (90) calendar days and at its own cost and expense, dismantle and remove all of the Facilities  
21 from the Structure associated with the terminated Site Supplement. Any such Facilities or other  
22 property not removed at the expiration of this Agreement in accordance with the preceding  
23 sentence and Lessee's continued failure to remove the same within thirty (30) calendar days after  
24 receipt of written notice from the City, shall be deemed abandoned and, at the election of the City,  
25 shall become the property of the City without payment of any kind to the Lessee, without  
26 increasing the City's liability to the Lessee, and for any disposition of it as the City decides to  
27 make.

28 c. Upon expiration or termination of a Site Supplement, the Lessee, at its sole cost  
29 and expense, shall fully restore any part of the Structure associated with the expired or terminated  
30 Site Supplement and the properties that have been damaged, modified or altered by the Lessee  
31 to the condition which existed on the date of the execution of this Agreement, reasonable wear  
32 and tear and damage due to casualty excepted.

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

35 **11. Maintenance and Repair.**

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

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

3

1 **12. Taxes.**

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

9 b. If Lessee does not make such payment(s) within the applicable time periods and  
10 the City does, the Lessee shall reimburse the City within thirty (30) calendar days of the City's  
11 written request.

12 **13. Environmental.**

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

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

25 **14. Interference.**

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

30 b. In the event of any such interference and upon notification by the City, which shall,  
31 in all instances, be made to the Lessee's emergency contact hotline at [(\_\_\_\_) \_\_\_\_-\_\_\_\_], the  
32 Lessee shall promptly dispatch authorized representatives to inspect and test the Lessee's  
33 Facilities. The City may, but is not required to, perform its own technical evaluation of the  
34 Lessee's Facilities to determine the cause of the interference. If after the Lessee and the City  
35 evaluate the cause of the interference, the City reasonably determines that the Lessee is causing  
36 the interference, then the Lessee shall have twelve (12) hours to cease all operation of its  
37 interfering Facilities and take all corrective actions which the City reasonably requires for  
38 interference with a City Structure. The Lessee shall not recommence operations until the  
39 Lessee's Facilities no longer interfere with the communication system or equipment of the City or  
40 other governmental agency and such non-interference is documented to the City's reasonable  
41 satisfaction. If the Lessee fails to do so, the City may take all reasonable actions with respect to

1 the Facilities to cause the cessation of the interference and the Lessee shall be responsible for  
2 all of the City's costs and expenses, including wages and overtime wages or contractual expenses  
3 for those involved. Under these circumstances of interference, there shall be no abatement of the  
4 Rent for any period when the Lessee is unable to operate its communication systems or  
5 equipment, and the Lessee shall not be entitled to any damages from the City for any period of  
6 time that the Lessee was not able to operate its Facilities, through and including the date on which  
7 it recommences operations, and hereby releases all such claims and actions for damages.

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

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

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

## 28 **15. Access.**

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

35 b. The Lessee shall have access to the Structure as directed by the City. Only authorized  
36 engineers or employees of the Lessee, persons under the Lessee's direct supervision, and FCC  
37 inspectors shall be permitted to enter the Property.

## 38 **16. Indemnification.**

39 a. The Lessee shall indemnify, defend and hold the City and its elected officials,  
40 appointees, directors and employees harmless, in their official and individual capacities, for  
41 injuries or damages and from all claims, complaints, suits and other actions seeking injuries or

1 damages, to persons or property, including but not limited to loss of use of the Structure, which  
2 may arise out of: (1) the Lessee's activities at or on the Structure; (2) the construction, installation,  
3 repair, maintenance, replacement, use and operation of its Facilities; (3) the use of the Structure;  
4 and (4) any negligent act or omission by the Lessee, its employees, contractors, subcontractors,  
5 agents or representatives in connection with this Agreement; excepting, however, in all instances,  
6 to the extent any of the aforesaid arise out of the negligent acts or willful misconduct of the City  
7 or its elected officials, appointees, directors, employees, subcontractors, agents or  
8 representatives.

9 b. The City may assert all immunities to which it and its elected officials, appointees,  
10 directors and employees are entitled in all such claims, complaints, suits and actions, and shall  
11 be entitled to participate in its own defense. The City may retain its own attorneys at the sole cost  
12 and expense of the City.

13 c. The Lessee shall reimburse the City, within thirty (30) calendar days after invoicing  
14 for such reimbursement, for any damage to the Structure and associated property caused by the  
15 negligence or willful misconduct of the Lessee, its employees, contractors, subcontractors, agents  
16 or representatives. The City shall reimburse the Lessee within thirty (30) calendar days after  
17 invoicing for such reimbursement, for any damage to the Facilities caused by the negligence or  
18 willful misconduct of the City, its employees, contractors, subcontractors, agents or  
19 representatives.

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

26 **17. Insurance.**

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

32 b. The Lessee, at its sole cost and expense, shall at all times during the Initial Term  
33 and any Renewal Term of this Agreement maintain in effect a personal injury and property  
34 damage commercial general liability insurance policy adequate to protect the City against liability  
35 for injury or death to any person or damage to any property caused, in whole or in part, by the  
36 Lessee's use of the Property, the Structure and its Facilities, with coverage in an amount of One  
37 Million Dollars (\$1,000,000.00) combined single limit each occurrence and Three Million Dollars  
38 (\$3,000,000.00) general aggregate. Such policy shall include the City and its elected officials,  
39 appointees, directors and employees as additional insureds by endorsement as their interests  
40 may appear as respects this Agreement excluding workers' compensation and employer's liability.  
41 Lessee shall provide at least thirty (30) calendar days advance written notice from either the  
42 insurer or the Lessee to the City of cancellation of any required coverage that is not replaced. A  
43 Certificate of Insurance, including the City and its elected officials, appointees, directors and

employees as additional insured as their interest may appears 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 Agreement, nothing in this Agreement 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 the Site Supplement under which such Rent is due and payable, 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.

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

4                   1.       If a Structure is completely destroyed or destroyed to a degree sufficiently  
5 substantial so that the Lessee's operations cannot be restored within thirty (30) calendar days,  
6 and the Lessee elects to terminate the Site Supplement associated with such Structure by written  
7 notice to the City (it being expressly acknowledged and agreed that the City shall have no  
8 obligation, whether or not the Lessee elects to terminate this Agreement, to rebuild or restore the  
9 Structure in any manner or to any extent for the Lessee's benefit).

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

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

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

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

32           d.       Any termination of this right to use a Structure, whether pursuant to this Paragraph  
33 20 or elsewhere under this Agreement, shall not discharge the Lessee from any obligation it may  
34 have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall  
35 occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such  
36 termination, whether the same be known or unknown at the time of such termination.

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

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

1 **21. Representations and Warranties.**

2 The Lessee represents and warrants to the City that:

3 a. The Lessee is a partnership organized under the laws of the State of Delaware,  
4 qualified to do business and in good standing in the State of Maryland, and authorized to conduct  
5 the business in which it is engaged and as described in this Agreement.

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

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

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

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

13 **22. Access to Records.**

14 a. At any time during normal business hours with reasonable prior notice from the  
15 City, and as often as the City may deem necessary, the Lessee shall make available to and allow  
16 inspection by the City, its employees or agents, of all records, information and documentation of  
17 the Lessee related to annual inspections, as-builts of any work undertaken on a Structure  
18 including replacements of like or similar items, and reports of interference incidents as relates to  
19 or as required by this Agreement ("Records"). Such inspections shall occur no more than once  
20 every twelve (12) months.

21 b. The Lessee shall maintain all Records for a period of at least three (3) years after  
22 the date of termination of this Agreement including any renewals, except in the event of litigation  
23 or settlement of claims arising from the performance of this Agreement, in which case the Lessee  
24 shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

25 **23. Remedies Cumulative and Concurrent.**

26 No remedy provided by this Agreement or reserved to the City is intended to be exclusive  
27 of any other remedies provided for in this Agreement, and each such remedy shall be cumulative,  
28 and shall be in addition to every other remedy given under this Agreement, or now or hereafter  
29 existing at law or in equity or by statute. Every right, power and remedy given to the City shall be  
30 concurrent and may be pursued separately, successively or together against the Lessee, and  
31 every right, power and remedy given to the City may be exercised from time to time as often as  
32 may be deemed expedient by the City.

33 **24. Waiver of Remedies for Breach or Default.**

34 No failure or delay by the City to insist upon the strict performance of any term, condition  
35 or covenant of this Agreement, or to exercise any right, power or remedy consequent upon a  
36 breach or default thereof, shall constitute a waiver of any such term, condition or covenant or of  
37 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 executed by the Parties duly authorized representatives;
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, 2<sup>nd</sup> Floor  
Annapolis, Maryland 21401

With a Copy to: City Attorney  
160 Duke of Gloucester Street  
Annapolis, Maryland 21401

To the Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**34. Legislation.**

This Agreement has been authorized according to the requirements of the Annapolis City Charter by Ordinance O-27-21.

**35. Force Majeure**

Time periods for performance under this Agreement and any affected Site Supplement 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

1 and new Facilities installations, unless the New Law requires retroactive application. In the event  
2 that the parties are unable to agree upon such new terms within ninety (90) calendar days after  
3 such notice, [then any rates contained in the New Law shall apply from the 90th calendar day  
4 forward until the negotiations are completed or a party obtains a ruling regarding the appropriate  
5 conforming terms from a commission or court of competent jurisdiction][then either party may  
6 terminate the Agreement with notice to the other party within thirty (30) calendar days from that  
7 deadline]. Except as provided in the proceeding, all terms in the existing Agreement shall remain  
8 in effect while the parties are negotiating.

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

4 WITNESS:

[LESSEE NAME]  
[d/b/a \_\_\_\_\_]

5  
6  
7  
8  
9 \_\_\_\_\_

By: \_\_\_\_\_  
[Name] (Seal)  
[Title]

10  
11  
12  
13 ATTEST:

CITY OF ANNAPOLIS

14  
15  
16  
17 \_\_\_\_\_  
18 Regina C. Watkins-Eldridge, MMC,  
19 City Clerk

By: \_\_\_\_\_  
Gavin Buckley, Mayor (Seal)

20 APPROVED FOR SUFFICIENT APPROPRIATIONS  
21 AND AVAILABILITY OF FUNDS:

22  
23 \_\_\_\_\_  
24 Joanna D. Dickinson, Director  
25 Finance Department  
26 Source of Funds: \_\_\_\_\_

27  
28 APPROVED FOR FORM AND LEGAL SUFFICIENCY:

29  
30  
31 \_\_\_\_\_  
32 Office of Law  
33 D. Michael Lyles, City Attorney  
34

**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 CELLCO PARTNERSHIP, d/b/a Verizon Wireless, a Delaware partnership (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]

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

3  
4       ATTEST:

CITY OF ANNAPOLIS

5  
6  
7       \_\_\_\_\_  
8       Regina C. Watkins-Eldridge, MMC,  
9       City Clerk

By: \_\_\_\_\_  
                    Gavin Buckley, Mayor                      (Seal)

10  
11       APPROVED FOR SUFFICIENT APPROPRIATIONS  
12       AND AVAILABILITY OF FUNDS:

13  
14       \_\_\_\_\_  
15       Joanna D. Dickinson, Director  
16       Finance Department  
17       Source of Funds: \_\_\_\_\_

18  
19       APPROVED FOR FORM AND LEGAL SUFFICIENCY:

20  
21  
22       \_\_\_\_\_  
23       Office of Law  
24       D. Michael Lyles, City Attorney

25  
26       LESSEE:

27  
28                               By: \_\_\_\_\_  
29                               Print Name: \_\_\_\_\_  
30                               Title: \_\_\_\_\_  
31                               Date: \_\_\_\_\_  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1  
2  
3  
4  
5  
6  
7

**EXHIBITS A**  
**Leased Site, Facility Equipment List and Plans**

**EXHIBIT A TO SITE SUPPLEMENT**

**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**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16