

RESOLUTION NO. 15 - 2018

Moved by:



A Resolution authorizing the City of Harrisburg to enter into a lease agreement with New Cingular Wireless PCS, LLC, for use of certain City property for the installation of wireless communications equipment.

**WHEREAS**, the City of Harrisburg (the "City"), is the owner of certain street light poles each located upon a portion of the public right of way and/or other real property (the "Site"); and

**WHEREAS**, New Cingular Wireless PCS, LLC, ("NCW") desires to install, maintain and operate communications equipment in and/or upon Sites owned by the City at its own expense; and

**WHEREAS**, the purpose of the communication equipment installed by NCW is to provide wireless communications services; and

**WHEREAS**, the City and NCW have identified the initial ten (10) Sites for installation of NCW equipment with the potential of identifying additional Sites in the future; and

**WHEREAS**, the initial term for each leased Site is a five (5) year period followed by four (4) additional five (5) year terms; and

**WHEREAS**, under the terms of the proposed lease, the City will receive annual rent for the first calendar year in the amount of One Thousand Two Hundred and 00/100 Dollars (\$1,200) per Site. Annual rent for each subsequent calendar year will increase by two and one half percent (2.5%); and

**WHEREAS**, the City will additionally receive a one-time Capital Costs payment in the amount of Two Thousand and 00/100 (\$2,000.00) dollars for each of the first five (5) Sites; and

**WHEREAS**, a copy of the proposed lease agreement is attached and incorporated as "Exhibit A"; and

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE CITY OF HARRISBURG**, that the City of Harrisburg is authorized to enter into a lease agreement with New Cingular Wireless, LLC for the purpose of leasing Sites to NCW for installation of wireless communication equipment.

**BE IT FURTHER RESOLVED** that the Mayor, City Controller and other appropriate City officials are authorized and directed to take all steps necessary to further effectuate the purpose of this Resolution.

I second this resolution: Ben J Allatt

Passed by City Council March 13, 2018

Wanda R. D. Williams

President of City Council

Attest [Signature]

City Clerk

YEAS		NAYS
	<del>MR. ALLATT</del>	
	<del>MS. DANIELS</del>	
	<del>MS. GREEN</del>	
	<del>MR. JOHNSON</del>	
	<del>MR. MADSEN</del>	
	<del>MR. MAJORS</del>	
	<del>MS. WILLIAMS</del>	
Yeas	<u>7</u>	
Nays	<u>0</u>	

# **Exhibit "A"**

## MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT (this "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2018 between the CITY OF HARRISBURG, having an address of 10 North Second Street, Harrisburg, PA 17101, hereinafter designated "LESSOR," and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, with its principal offices at 575 Morosgo Drive, Atlanta, GA 30324, hereinafter designated "LESSEE." LESSOR and LESSEE are, at times, collectively referred to hereinafter as the "Parties" or individually as the "Party."

### W I T N E S S E T H :

WHEREAS, LESSOR is the owner of certain street light poles (the "Poles"), each located upon a portion of the public right of way and/or other real property (as to each Pole, the "Premises" and, the real property upon which each Pole is located, together with such Pole, the "Site"), which are located within the geographic area covered by a license issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, LESSEE desires to install, maintain and operate communications equipment (the "Equipment") in and/or upon certain Sites to provide wireless service, pursuant to LESSEE's FCC issued licenses; and

WHEREAS, LESSOR and LESSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to each Site at which LESSOR may permit LESSEE to install, maintain and operate the Equipment as hereinafter set forth; and

WHEREAS, LESSOR and LESSEE acknowledge that they will enter into one lease supplement (each a "Supplement," collectively, the "Supplements"), in substantially the form attached hereto as **Exhibit A**, for each Site that LESSOR agrees to lease to LESSEE; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of LESSOR and LESSEE in different geographic areas and, as a result, each Supplement may be signed by LESSEE's and LESSOR's affiliated entities as further described herein, as is appropriate based upon the ownership or other interest in the subject Site, in the case of LESSOR, and the entity holding the FCC license in the subject geographic area, in the case of LESSEE.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **SITES.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LESSOR agrees to lease to LESSEE the Site, as more fully described in each Supplement to be executed by the Parties, for the installation, operation and maintenance of the Equipment, as more fully described in the Supplement; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty-four (24) hours a day, to and from the Site for the purpose of installation, operation, modification, replacement and maintenance of LESSEE's Equipment, along with the right to use the public rights-of-way as

described in Paragraph 25. LESSEE, at LESSEE'S sole cost and expense, shall install the Equipment on the Sites materially in accordance with the designs set forth on **Exhibit B** (the "Designs"); said Designs shall be approved by the LESSOR and shall be subject to applicable zoning and other ordinances. LESSOR and LESSEE acknowledge and agree that any replacement pole that is installed by LESSEE shall, subject to applicable zoning and other ordinances, be of sufficient height to reasonably meet LESSEE'S radio frequency coverage needs for the particular Site.

2. **CONDITION OF PROPERTY.** LESSOR shall deliver each Site to LESSEE in "AS-IS" condition.

3. **TERM; RENTAL; EXTENSIONS.**

a. This Agreement shall be for a term of twenty-five (25) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties (each, respectively, the "Effective Date"), provided, however, that the initial term (the "Initial Term") of each Supplement shall commence on the first day of the month following the date LESSEE commences installation of the Equipment on the Site (each a "Commencement Date") and expire five (5) years thereafter. LESSEE shall commence paying annual rent (the "Annual Rent") on the Commencement Date and each anniversary of the Commencement Date thereafter, in advance, to the payee designated by LESSOR in the Supplement, or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days prior to the due date for any Annual Rent payment by notice given in accordance with Paragraph 16. LESSOR and LESSEE acknowledge and agree that LESSEE shall not be required to send the first payment of Annual Rent for each Supplement until thirty (30) days after the Commencement Date of that Supplement. LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date of each Supplement. Each Supplement shall automatically be extended for four (4) additional five (5) year terms (each an "Extension Term," and collectively, the "Extension Terms"), unless LESSEE terminates the Supplement at the end of the then-current Term (as hereinafter defined) by giving LESSOR written notice of LESSEE'S intent to terminate at least three (3) months prior to the end of the then-current Term. The Initial Term and all Extension Terms granted under a Supplement shall be collectively referred to herein as the "Term." Notwithstanding anything herein, after the expiration or termination of this Agreement, LESSEE shall not be able to enter into any new Supplements, however all Supplements that are fully executed as of the expiration or termination date shall remain in full force and effect and shall remain subject to the terms of this Agreement for the specified Term of the individual Supplement. Annual Rent for the first calendar year of this Agreement will be One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per Site. Annual Rent for each subsequent calendar year will increase by two and one half percent (2.5%).

b. Upon prior agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

c. Within fifteen (15) days of the Effective Date of each Supplement, LESSOR shall provide to LESSEE a completed Internal Revenue Service Form W-9, or equivalent for any party to whom Rent payments are to be made pursuant to this Agreement and the Supplement (the

"Rental Documentation"). Within fifteen (15) days of obtaining an interest in any Site or this Agreement, any of LESSOR's assignee(s), transferee(s) or other successor(s) in interest shall provide such Rental Documentation to LESSEE. LESSEE may request other reasonable documentation, which LESSOR shall provide at its reasonable discretion. The delivery of Rental Documentation to LESSEE by LESSOR or any assignee(s), transferee(s), or other successor(s) in interest of LESSOR shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein or in any Supplement, LESSEE shall have no obligation to make any Rent payments until Rental Documentation has been supplied to LESSEE as provided herein. Once the Rental Documentation has been delivered to LESSEE, any unpaid rental payments shall be paid to LESSOR. Within thirty (30) days of a written request from LESSEE, LESSOR or any assignee(s) or transferee(s) of LESSOR shall provide updated Rental Documentation. All title matters of record or conditions providing inquiry notice of which are visible upon the ground shall be "Permitted Encumbrances" for purposes of this Agreement.

d. **ADDITIONAL RENT.** As additional rent, LESSEE further agrees to pay LESSOR a non-refundable one-time payment of Two Thousand and 00/100 Dollars (\$2,000.00) on each of the first five (5) fully-executed Supplements, which shall be due and payable within thirty (30) days of the commencement of construction under the Supplement (the "Capital Costs"). The Parties understand and agree that the Capital Costs are being paid to LESSOR to reimburse LESSOR for fees incurred in the performance of this Agreement, and no further Capital Costs shall be payable to LESSOR beyond the first five (5) fully-executed Supplements, the cumulative sum of which shall not exceed Ten Thousand and 00/100 Dollars (\$10,000.00). Annual Rent and Capital Costs shall be, collectively, "Rent."

#### 4. UTILITIES.

a. LESSOR shall, at all times during the Term of each Supplement, provide electrical service and telephone service access within the Site. In the event there are not sufficient electric and telephone, cable or fiber utility sources located on the Site, LESSOR agrees to grant LESSEE or the local utility provider the right to install such sources on, over and/or under the Site set forth in the Supplement to operate its Equipment. LESSOR shall receive one total bill for all power used at each Site, which will cover LESSOR and LESSEE's electrical needs at such Site. Therefore, LESSEE shall pay an estimated utilities charge of Six Hundred Dollars (\$600.00) annually to LESSOR for each Site location to cover LESSEE's electrical usage at each Site. Such utilities payment shall be paid annually in concert with the Annual Rent, on the annual anniversary of the Commencement Date under each Supplement.

b. During any power interruption to the Sites that occurs during the Term of each Supplement, LESSEE shall be permitted to install and thereafter maintain and/or provide access to and use of, as necessary, a temporary power source, conduits and all related equipment and appurtenances on the Site in such locations as reasonably approved by LESSOR.

5. **USE; GOVERNMENTAL APPROVALS.** LESSEE shall use the Site for the purpose of constructing, maintaining, repairing and operating Equipment for the purpose of providing wireless communications services and uses incidental thereto. LESSEE shall have the right, without payment of any additional rent, Annual Rent, Capital Costs or other fee, to replace or repair the Equipment or bring fiber to each Site. LESSEE may not add or otherwise modify its

utilities, equipment, antennas and/or conduits or any portion thereof without an amendment to the Supplement. In the event LESSEE changes its use of frequencies at the Site, it will provide written notice of the same to LESSOR. It is understood and agreed that LESSEE's ability to use each Site is contingent upon LESSEE obtaining, after the execution date of each Supplement, all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any federal, state or local authorities as well as a satisfactory structural analysis which will permit LESSEE to use the Site as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such Governmental Approvals and shall take no action which would adversely affect the status of the Site with respect to the proposed use thereof by LESSEE. In the event that (a) any of such applications for such Governmental Approvals should be finally rejected; (b) any Governmental Approval issued to LESSEE is canceled, expires, lapses or is otherwise withdrawn or terminated by governmental authority, through no fault of LESSEE; (c) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner, or (d) LESSEE determines that LESSOR does not or will not upon any pole replacement done by LESSEE have title to any given Site, LESSEE shall have the right to terminate the applicable Supplement without payment of a termination fee or any other cost of any kind hereunder. Notice of LESSEE's exercise of its right to terminate under this Paragraph 5 shall be given to LESSOR in accordance with the notice provisions set forth in Paragraph 16 and shall be effective upon such date as designated by LESSEE. All Rent paid to said termination date shall be retained by LESSOR. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, the LESSEE shall have no further obligations for the payment of Rent to LESSOR for the terminated Supplement.

6. INDEMNIFICATION. LESSEE shall indemnify, defend and hold LESSOR harmless against any third party claim for personal injury or property damage caused or exacerbated by the acts or omissions of LESSEE, its employees, contractors or agents, except to the extent such claims or damages may be caused or exacerbated by the acts or omissions of LESSOR, or its employees, contractors or agents.

7. INSURANCE.

a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Site, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Site shall waive the insurer's right of subrogation against the other Party.

b. LESSOR and LESSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance on an ISO CGL form 00 01 or equivalent with limits of One Million and 00/100 Dollars (\$1,000,000.00) for injury to or death of one or more persons and for damage or destruction to property in any one occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) policy aggregate. LESSOR and LESSEE each agree that it will include

the other Party as an additional insured. Notwithstanding the forgoing, LESSEE may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event LESSEE elects to self-insure its obligation under this Agreement to include LESSOR as an additional insured, the following conditions apply: (i) LESSOR shall promptly and no later than thirty (30) days after notice thereof provide LESSEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Paragraph and provide LESSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) LESSOR shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of LESSEE; and (iii) LESSOR shall fully cooperate with LESSEE in the defense of the claim, demand, lawsuit, or the like. Each Party shall provide the other with certificates of such insurance together with additional insured endorsements.

8. **LIMITATION OF LIABILITY.** Except for indemnification pursuant to Paragraph 6 and Paragraph 20, neither Party shall be liable to the other, or any of their respective agents, representatives or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

9. **ANNUAL TERMINATION.** Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate each Supplement upon the annual anniversary of the Commencement Date provided that three (3) months' prior notice is given to LESSOR. If LESSEE terminates a Supplement pursuant to this Paragraph 9, then LESSEE shall pay LESSOR a termination fee equal to one-half (1/2) of the then-current Annual Rent.

10. **INTERFERENCE.** LESSEE agrees to install Equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then-existing industry standards to any equipment of LESSOR or other lessees of the Site which existed on the Site prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's Equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such Equipment and later powering up such Equipment for intermittent testing. In no event will LESSOR be entitled to terminate a Supplement or relocate the Equipment as long as LESSEE is making a good faith effort to remedy the interference issue unless LESSEE fails to remedy the interference issue within sixty (60) days. LESSOR agrees that LESSOR and/or any other lessees of the Site who currently have or in the future take possession of the Site will not install equipment that is of the type and frequency that causes harmful interference, which is measurable in accordance with then existing industry standards to the then existing Equipment of LESSEE. In the event LESSOR and/or any other tenants of the Site cause harmful interference which is measurable in accordance with then existing industry standards to LESSEE, and after LESSEE has notified LESSOR in writing of such interference, LESSOR will take all commercially reasonable steps necessary to correct and eliminate the interference. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance. In case of interference



caused by LESSOR or any lessee, licensee or tenant of LESSOR that is not remedied within sixty (60) days after notice, the LESSEE may terminate the Supplement.

11. **REMOVAL AT END OF TERM.** LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of a Supplement, remove its Equipment, conduits, fixtures and all personal property installed above ground and restore the Site to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the Equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If LESSEE's Equipment remains on the Site after termination of the Supplement, LESSEE shall pay holdover Annual Rent at (150%) of the then-existing rate until such time as the removal of the Equipment is completed. LESSOR's acceptance of such holdover Annual Rent shall not prevent LESSOR from removing the Equipment; after expiration of LESSEE'S ninety (90) day removal period described above, but LESSOR shall refund any unearned portion of the holdover Annual Rent, after deducting the cost of removing the Equipment.

12. **RIGHT OF FIRST REFUSAL (COMMUNICATIONS EASEMENT).** If LESSOR elects, during the Term of any Supplement to grant to a third party by easement or other legal instrument an interest in and to that portion of the Site occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of the Supplement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may grant the easement or interest in the Site or portion thereof to such third person in accordance with the terms and conditions of such third party offer. This right of first refusal shall not apply if LESSOR leases the Site or a portion thereof to a third party who is an FCC licensed provider of wireless communications services, provided that any such lease shall be subject to LESSEE's rights under this Agreement.

13. **RIGHTS UPON SALE.** Should LESSOR, at any time during the Term of any Supplement decide (a) to sell or transfer all or any part of the Site to a purchaser other than LESSEE, or (b) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Site occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to the Supplement and upon any such purchaser or transferee recognizing in writing LESSEE's rights hereunder and under the terms of the Supplement, LESSOR shall be released from all further obligations and liabilities under the Supplement. In the event that LESSOR completes any such sale, transfer or grant described in this Paragraph without executing an assignment of the Supplement whereby the third party agrees in writing to assume all obligations of LESSOR under the Supplement, then LESSOR shall not be released from its obligations to LESSEE under the Supplement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Supplement.

14. QUIET ENJOYMENT AND REPRESENTATIONS. LESSOR covenants that LESSEE, on paying Rent and performing the covenants herein and in a Supplement, shall peaceably and quietly have, hold and enjoy the Site, subject to Permitted Encumbrances. LESSOR represents and warrants to LESSEE as of the execution date of each Supplement, and covenants during the Term that LESSOR is seized of sufficient title and or interest to each Site and has full authority to enter into and execute the Supplement with respect thereto.

15. ASSIGNMENT. This Agreement and each Supplement under it may be sold, assigned or transferred by the LESSEE without any approval or consent of, but with prior notice to, the LESSOR to the 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 Site is located by reason of a merger, acquisition or other business reorganization, or to any entity with a net worth of at least One Hundred Million Dollars (\$100,000,000). As to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR:                      City of Harrisburg  
                                     10 North Second Street  
                                     Harrisburg, PA 17101  
                                     Attention: City Engineer

With a copy to:

City of Harrisburg  
10 North Second Street  
Harrisburg, PA 17101  
Attention: City Solicitor

LESSEE:                      AT&T Network Real Estate Administration  
                                     Re: Small Cell Site #: \_\_\_\_\_; Small Cell Site Name:  
  
                                     \_\_\_\_\_  
                                     Fixed Asset No: 14076635  
                                     575 Morosgo Drive  
                                     Atlanta, GA 30324

With a copy to:

AT&T Legal Department-Network

Attn.: Network Counsel

Re: Small Cell Site #: \_\_\_\_\_; Small Cell Site Name:

Fixed Asset No: 14076635

208 South Akard Street

Dallas, TX 75202-4206

AT&T Mobility Corporation

Attn: Lease Administration, Mail Drop 370

Re: Small Cell Site #: \_\_\_\_\_; Small Cell Site Name:

Fixed Asset No: 14076635

200 North Warner Road

King of Prussia, PA 19406

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. RECORDING. LESSOR agrees to execute a memorandum of each Supplement (each a "Memorandum of Lease"), which LESSEE may record with the appropriate recording office after the Commencement date of the Supplement.

18. DEFAULT. In the event there is a breach by one Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion; provided that the extended cure period shall not exceed a total cure period of sixty (60) days. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph.

19. REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, including but not limited to uncured interference under Paragraph 10, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the applicable Supplement and or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Site is located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to obtaining the insurance policies required hereunder. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due

against all fees due and owing to LESSOR under the applicable Supplement until the full undisputed amount is fully reimbursed to LESSEE. If LESSOR undertakes any such performance on LESSEE's behalf and LESSEE does not pay LESSOR the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LESSOR may charge LESSEE interest on all fees due and owing to LESSEE under the applicable Supplement until the full amount, with interest, is fully reimbursed to LESSEE. "Interest" shall be the interest rate equal to the Prime Rate published from time to time in the Money Rates column of the Wall Street Journal plus four percent (4%) (or, if lower, the highest rate then allowed under the usury laws of the Commonwealth of Pennsylvania) from the date due until the date paid. LESSOR's right to charge Interest with respect to past due amounts is in addition to LESSOR's rights and remedies set forth in this Paragraph 19. If LESSOR defaults and LESSEE elects to terminate the impacted Supplement, LESSOR shall refund any portion of the Rent actually paid by LESSEE pro-rated for any period of the Term remaining following the effective date of the termination of the impacted Supplement. LESSOR shall make such refund within thirty (30) days of the effective date of such termination.

20. ENVIRONMENTAL. LESSEE shall hold LESSOR harmless and indemnify LESSOR from and assume all duties, responsibility and liability at LESSEE's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: (i) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, to the extent such non-compliance results from conditions caused or exacerbated by LESSEE; and (ii) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Sites or activities conducted thereon, except to the extent such environmental conditions are caused or exacerbated by LESSOR.

21. CASUALTY; DAMAGE TO POLES.

a. In the event of damage by fire or other casualty to the Site or access thereto that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Site or access thereto is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Site for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Site, terminate the Supplement upon fifteen (15) days' prior written notice to LESSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the Rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired. LESSOR shall be under no obligation to restore any Site damaged by fire or other casualty.

b. In the event of damage by car accident or other casualty to the Site, the procedure shall be as set forth on **Exhibit C** (the "Knock Over Procedure") attached hereto.

22. **APPLICABLE LAWS/CHANGE IN LAW.** Except as provided in the following sentence, during the Term, LESSOR shall maintain the Site, as the case may be, in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating "Hazardous Substances," as such term may be defined under any applicable federal, state or local law) (collectively "Laws.") LESSEE shall, with respect to the condition of the Site and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific use of the Site; and (b) all building codes requiring modifications to the Site due to the improvements being made by LESSEE to the Site. For the avoidance of doubt, LESSOR shall comply with all Laws relating to LESSOR's ownership and use of the Site and any Non-LESSEE made improvements on the Site. In the event that any legislative, regulatory, judicial, or other action affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of small cells on LESSOR infrastructure or in the right of way, that differ, in any material respect from the Laws in effect on the date of this Agreement ("New Law"), then either Party may, upon thirty (30) days written Notice, require that the terms of this Agreement be renegotiated to conform to the New Law. Unless the Parties agree otherwise, such conformed terms shall then apply on a going forward basis for all existing and new small cell installations, unless the New Law requires retroactive application, in which case such new terms shall apply retroactively, as required by the New Law. In the event that the Parties are unable to agree upon conformed terms within 90 days after Notice, then the rates contained in the New Law shall apply from the 90<sup>th</sup> 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 preceding sentence, all terms in the existing Agreement shall remain in full force and effect while the Parties are negotiating revisions to the Agreement to be compliant with the New Law.

23. **AUTHORIZED ENTITIES.** This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (a) any entity in which the Party directly or indirectly holds an equity or similar interest; (b) any entity which directly or indirectly holds an equity or similar interest in the Party; or (c) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described above are referred to herein as an "Authorized Entity." No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a site-specific Supplement. Only the Party and the Authorized Entity executing a Supplement are responsible for the obligations and liabilities related thereto arising under that Supplement and this Agreement. All communications and invoices relating to a Supplement must be directed to the Authorized Entity signing the Supplement. A default by any Authorized Entity shall not constitute a default by any other Authorized Entities not a party to the applicable Supplement.

24. **MISCELLANEOUS.** All recitals are hereby incorporated into this Agreement as material terms hereof. This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the LESSOR and

the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such Party shall have the right to enforce such rights at any time. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state in which the Sites are located without reference to its choice of law rules.

25. USE OF PUBLIC RIGHTS-OF-WAY.

a. LESSOR hereby grants to LESSEE the right to use the municipal public rights-of-way for the installation, maintenance and operation of LESSEE's Equipment in and/or upon each Site located within said public right-of-way. LESSOR agrees that the annual Rent as described in Paragraph 3 above includes any fee or rent associated with LESSEE's use of the public rights-of-way, and in no event shall LESSEE be obligated to pay LESSOR any other rent or fee in connection with such use of any of the public rights-of-way. Such use shall be on the same basis and subject to the same regulation as the use by the public.

b. Subject to LESSEE obtaining any required Governmental Approvals, this Agreement shall allow LESSEE to perform all work on LESSEE's Equipment within the public rights-of-way and to park vehicles in the streets and other public rights-of-way when necessary for the installation, replacement, operation, maintenance or removal of LESSEE's Equipment. Subject to any permit fees assessed against all similarly situated permit applicants, LESSEE and contractors performing work for LESSEE shall not be required to pay any fee in order to perform work on LESSEE's Equipment, or park within the streets and other public rights-of-way. Without limiting the generality of the foregoing sentence, the LESSEE and its subcontractors will be subject to (1) application fees, inspection fees, and degradation fees (if applicable) for all underground work requiring excavations or borings within the public right-of-way pursuant to City Ordinance 18-2016; and (2) parking fees for the utilization of any revenue-generating parking spaces while performing work within the public rights-of-way. Such fees may be amended from time to time.

c. In the event, a Pole does not exist in the public right-of-way, LESSEE may set a new Pole or Poles within the public right-of-way, in compliance with applicable Laws, upon obtaining LESSOR's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

**LESSOR**

City of Harrisburg

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WITNESS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**LESSEE**

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: John Green

**WITNESS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT A

### LEASE SUPPLEMENT

This Lease Supplement ("Supplement"), is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the CITY OF HARRISBURG, having an address of 10 North Second Street, Harrisburg, PA 17101 ("LESSOR") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, with its principal offices at 575 Morosgo Drive, Atlanta, GA 30324 ("LESSEE").

1. **MASTER LEASE AGREEMENT.** This Supplement is a Supplement as referenced in that certain Master Lease Agreement between the LESSOR and LESSEE dated \_\_\_\_\_, 20\_\_ (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **SITE-SPECIFIC TERMS.**

a. LESSOR hereby leases the Site located at \_\_\_\_\_. The Site leased by the LESSOR to the LESSEE hereunder is shown on **Exhibit 1** attached hereto and made a part hereof. The Equipment to be installed on the Site is shown on **Exhibit 2** attached hereto and made a part hereof.

b. The following shall be added only to the first five (5) Supplements under the Agreement that the Parties execute:

"This Supplement is the \_\_\_\_\_ Supplement entered into between the Parties."

**ADDITIONAL RENT.** As additional rent, LESSEE further agrees to pay LESSOR a non-refundable, one-time payment of Capital Costs in the amount of Two Thousand and 00/100 (\$2,000.00) dollars for only, each of the first five Sites for which Supplements are executed by the Parties. The Additional Rent for Capital Costs shall be due and payable within thirty (30) days of the commencement of construction under the respective Supplement for each of the first five Sites under this Agreement. The Parties understand and agree that the Additional Rent for Capital Costs is being paid to LESSOR to reimburse LESSOR for fees incurred in the performance of this Agreement, and no further Capital Costs shall be payable to LESSOR beyond this one-time fee. The cumulative sum of Capital Costs paid by LESSEE to LESSOR, under this Agreement, shall not exceed Ten Thousand and 00/100 (\$10,000.00) dollars.



3. TERM. The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.

4. CONSIDERATION. The initial Annual Rent under this Supplement shall be One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per year, payable to The City of Harrisburg, at 10 North Second Street, Harrisburg, PA 17101. Annual Rent for each subsequent calendar year will increase by two and one half percent (2.5%).

5. Site Specific Terms. (Include any site-specific terms)

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IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seal the day and year first above written.

**LESSOR**

City of Harrisburg

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WITNESS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**LESSEE**

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: John Green

**WITNESS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT 1**  
**SITE PLAN**

**EXHIBIT 2**  
**EQUIPMENT**

Exhibit 2 to Exhibit A to Master Lease Agreement

**EXHIBIT B**

**DESIGNS**

**[TO BE PROVIDED]**

## **EXHIBIT C**

### **KNOCK OVER PROCEDURE**

When emergency pole replacements or repairs are required or other emergency situations exist, each Party shall notify the other as soon as practicable, but in no event later than twenty-four (24) hours after the notifying Party has received notice that an emergency exists or has occurred, identifying the specific nature of the emergency and which pole(s) are affected, and providing an update on the status of the impact as reasonably requested thereafter.

**[TO BE PROVIDED]**

**INTER**

**OFFICE**

# MEMO

To: HARRISBURG CITY COUNCIL  
From: Kirk Petroski, City Clerk  
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018      RESOLUTION NO. 15-2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

*Richard E. Baldock*  
Acting Sr. Deputy City Solicitor

2-9-2018  
Date

Requested by Department/Bureau: Engineering

Department/Bureau Contact Person: Wayne Martin

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: *KP*

Date: 2-9-18