

SMALL CELL LICENSE AGREEMENT

THIS SMALL CELL LICENSE AGREEMENT (the "Agreement") is dated as of April 16th, 2018 (the "Effective Date"), and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California ("LICENSOR" or "City"), and New Cingular Wireless PCS, LLC a Delaware limited liability company d/b/a AT&T Mobility ("LICENSEE").

Recitals

A. WHEREAS, the LICENSOR is the owner of certain Poles located in the Rights-of-Way of the City of Huntington Beach; and

B. WHEREAS, LICENSEE desires to use space on certain of the LICENSOR's Poles for installation, operation, maintenance, repair and replacement of its Small Cell and/or Equipment, permitted by the Federal Communications Commission ("FCC") and/or PUC and in accordance with all Laws including but not limited to FCC rules and regulations and the City's Municipal Code; and

C. WHEREAS, LICENSEE wishes to locate, place, attach, install, operate, control, and maintain Small Cell and/or Equipment on the Poles in the Rights-of-Way, owned by the LICENSOR; and

D. WHEREAS, LICENSEE acknowledges that before obtaining a license, LICENSEE must first obtain Site Permits; and

E. WHEREAS, LICENSEE is willing to compensate the LICENSOR in exchange for a grant and right to license portions of the Poles, on the terms and conditions set forth herein and the respective Site Permits.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS. The following definitions shall apply generally to the provisions of this Agreement:

1.1 Equipment. "Equipment" means the equipment cabinets, antennas, high power radios, utilities and underground fiber optic cables, wires, meters and related equipment, whether referred to singly or collectively, to be installed and operated by LICENSEE only as approved by the City under a particular Site Permit and that comprise a Small Cell installation.

1.2 Information service. “Information service” means generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information and content via telecommunications, and includes electronic publishing, as the same may evolve over time.

1.3 Laws. “Laws” means any and all applicable Federal, State and Local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other legal requirements as such Laws may be amended from time to time.

1.4 Municipal Facilities. “Municipal Facilities” means LICENSOR-owned property including City-owned Poles, lighting fixtures, or electroliers located within the ROW and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.5 Network. “Network” or collectively “Networks” means the telecommunication network operated by LICENSEE to serve its customers.

1.6 Poles. “Poles” or “City Poles” shall mean any light pole(s) that is owned and/or licensed by the LICENSOR.

1.7 PUC. “PUC” means the California Public Utilities Commission.

1.8 Rights-of-Way. “Rights-of-Way” or “ROW” means public property including air space, owned, dedicated, granted, held, prescriptively used, by LICENSOR or otherwise authorized, for or by LICENSOR.

1.9 Small Cell. “Small Cell” shall mean equipment at a node/location that transmits and/or provides connection to a mobile communication system and complies with Huntington Beach Municipal Code and Public Works Design Standards and be affixed to an existing City Pole including a light standard.

1.10 Site. “Site” shall mean the location of the Pole(s) described in Exhibit “A” and depicted in Exhibit “B”, attached hereto.

1.11 Site Permit. “Site Permit” shall mean a Permit pursuant to Section 12.13.010 of the City of Huntington Beach Municipal Code and a Wireless Permit as set forth pursuant to Huntington Beach Zoning and Subdivision Ordinance (“HBZSO”) Section 230.96.

1.12 Telecommunications Services. “Telecommunications Services” or “Services” has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53) or any other use authorized by the PUC and/or the FCC to LICENSEE.

2. TERM.

2.1 The initial term of this Agreement shall be for a period of ten (10) years (the "Term"), commencing on the first day of the month following mutual execution of this Agreement (the "Agreement Commencement Date") and ending on the tenth (10th) anniversary thereof, or until the expiration of the last remaining Site Permit, whichever is later, unless this Agreement is sooner terminated as provided herein.

2.2 The initial term for each particular Site shall be the first day of the month following the date LICENSEE has commenced installation of its Small Cell and/or Equipment at a particular Site pursuant to the applicable Site Permit (the "Commencement Date") and shall be for an initial term of ten (10) years ("Site Initial Term"). Each Site Initial Term may be extended for one (1) additional five (5) year period upon an amendment to this Agreement executed in writing (the "Site Permit Renewal Term"). Unless otherwise authorized by the City, in writing, the Commencement Date shall not be later than one hundred eighty (180) days from approval of the Site Permit. Unless otherwise authorized by the City Manager or his/her designee, in writing, should LICENSEE fail to commence construction within the one hundred eighty (180) day period, the license and Site Permit as to that Small Cell shall terminate.

2.3 The Site Permit Initial Term and Site Permit Renewal Term shall be collectively referred to herein as the "Site Permit Term." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Small Cell location that has a Site Permit in effect until the expiration or termination of the Site Permit. Upon expiration or termination of this Agreement, the parties will negotiate in good faith the terms of a replacement agreement. Should LICENSEE hold over and continue in possession of the Site after expiration or termination of this Agreement, with or without the express prior written consent of LICENSOR, LICENSEE'S continued occupancy of the Site shall constitute a month-to-month tenancy, subject to all of the terms and conditions of this Agreement not to exceed one (1) year from expiration of the Agreement.

3. REPRESENTATION CONCERNING SERVICES; TERMINATION. This Agreement shall automatically terminate without any notice from City in the event the LICENSEE ceases to operate as a provider of Telecommunications Services under applicable Laws. In the event this Agreement terminates as described above, LICENSEE shall remove its Small Cell and/or Equipment no later than ninety (90) days from the date of such termination at its sole cost and expense, and shall be required to return the Site to its condition prior to installation as required by the City Engineer at the LICENSEE's sole cost and expense.

In the event the LICENSOR at its sole discretion determines LICENSEE has failed to fulfill its material obligation as provided under this Agreement, LICENSOR shall provide LICENSEE written notice detailing the material obligations which the LICENSOR claims LICENSEE has failed to fulfill and notify LICENSEE that it is deemed to be in default of this Agreement pertaining to a particular Site Permit. The determination of material obligations shall be at LICENSEE's discretion. LICENSEE shall have thirty (30) days to cure the default; provided, however, where such default cannot reasonably be cured within thirty (30) days, LICENSEE shall not be in default if it commences to cure such default within said thirty (30) day period and diligently pursues cure to completion, not to exceed ninety (90) days. If default is not cured within the prescribed time frame, then the LICENSOR may terminate the Site Permit pertaining to the location of the default by issuing written notice to LICENSEE and the Site Permit shall terminate no sooner than ten (10) days from the date of issuance of the notice. Upon termination, LICENSEE shall remove its Equipment pursuant to Section 6.4.

LICENSEE may terminate this Agreement or any Site Permit by providing LICENSOR with sixty (60) days written notice. Upon the removal of the Small Cell and/or Equipment related to a terminated Site Permit, the obligation of LICENSEE to pay any and all fees hereunder shall automatically cease. In the event this Agreement is terminated, City shall determine at its sole discretion whether any particular Site Permit shall also terminate. In the case of any Site Permit termination, LICENSEE shall remove all Small Cell components and/or Equipment from City ROW installed pursuant to this Agreement no later than ninety (90) days from the date of such termination and return the ROW (including Pole) to its condition before the installation, reasonable wear and tear excepted, at LICENSEE's sole cost.

4. SCOPE OF AGREEMENT. Any and all rights expressly granted to LICENSEE under this Agreement, which shall be exercised at LICENSEE's sole cost and expense, shall be subject to the prior and continuing right of the LICENSOR under applicable Laws to use any and all parts of the ROW exclusively or concurrent licenses with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW as of the date of the individual Site.

4.1 Plan for Attachment to City Poles or Municipal Facilities. Prior to installation, LICENSEE will submit to the authorized representative of the LICENSOR a proposed plan for the design for any proposed Small Cell installations that will include all Equipment LICENSEE proposes to use. LICENSEE shall include in the plan proof of insurance, a provision to provide City employees and contractors with safety training related to the Small Cell and/or Equipment and installations. City may reject the plan including any component thereto at its reasonable discretion and said Small Cell shall not be allowed as part of this Agreement. Any approved plan shall be included as part of an applicable Site Permit.

4.1.1 Subject to the conditions of this Agreement and as authorized by the Huntington Beach Municipal Code including the HBZSO, LICENSEE may enter upon the ROW to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Small Cell and/or Equipment permitted and approved by the City in or on City Pole providing Telecommunications Services.

4.1.2 LICENSEE will make arrangements with Southern California Edison to provide the Equipment with power as approved in the construction plans. Payment for said power is the sole responsibility of LICENSEE. LICENSEE will power its equipment in a way as to reduce the disruption to City-owned equipment or facilities. All work contracted or subcontracted by LICENSEE, including electric work, shall be performed by a licensed contractor that is approved by the LICENSOR. LICENSOR agrees to promptly approve or disapprove LICENSEE's proposed contractors, a list of whom may be submitted in advance of any Site Permits or the commencement of any work related thereto.

4.1.3 Prior to commencement of any work to install or operate a Small Cell or Equipment, LICENSEE shall obtain and/or possess any required City, State or Federal permits or licenses.

4.1.4 If LICENSEE selects a Pole that is structurally inadequate to accommodate Equipment, at the City's sole discretion with prior written approval, LICENSEE may, at its sole cost and expense, replace the Pole (a "Replacement Pole") with one that is acceptable to and approved by the LICENSOR and dedicate such Replacement Pole to the LICENSOR upon installation thereof. If LICENSEE's Small Cells or Equipment are installed on any Replacement Poles, LICENSEE shall provide and deliver to LICENSOR one (1) additional Replacement Pole (excluding mast arm) so that a replacement is immediately available to LICENSOR in case an existing Replacement Pole in use by LICENSEE is damaged or destroyed and is no longer suitable to support LICENSEE's Small Cell or Equipment. If an existing standard Pole has been replaced with a Replacement Pole and such Replacement Pole is damaged or destroyed or is no longer suitable to support LICENSEE's Small Cell or Equipment, LICENSEE shall be responsible for the cost difference, if any, in replacing such Replacement Pole.

4.2 No Interference. LICENSEE in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, wired and wireless telecommunications facilities owned by the LICENSOR or any third party; electroliners, cable television, location monitoring services, public safety and other

then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. However, the LICENSOR agrees that its tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW within three hundred feet (300') of any LICENSEE Small Cells will be permitted to install only such components and/or equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment of LICENSEE.

4.3 Permits; Default. Whenever LICENSEE is in default of this Agreement or an applicable Site Permit, after notice and a thirty (30) day cure period, or where such default cannot reasonably be cured within thirty (30) days but LICENSEE commences to cure such default within said thirty (30) day period and diligently pursues cure to completion, not to exceed ninety (90) days, in all instances, in any of its obligations under this Agreement, the LICENSOR may suspend this Agreement and/or deny encroachment, excavation or similar work until such time as LICENSEE cures all of its defaults.

4.4 No Authorization to Provide Other Services. LICENSEE represents, warrants and covenants that its Small Cell and/or Equipment installed pursuant to this Agreement and each Site Permit will be utilized solely for providing the Telecommunications Services identified herein and LICENSEE is not authorized to and shall not use its Small Cell and/or Equipment to offer or provide any other services not specified herein.

4.5 Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to LICENSOR's use of the ROW including: (1) the continuing right of the LICENSOR to use, and to allow any other person or persons to use, any and all parts of the ROW or Municipal Facilities, exclusively or concurrently with any other person or persons, and (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the ROW or Municipal Facilities now or at any time during the Term of this Agreement, including, without limitation any Encumbrances granted, created or allowed by the LICENSOR at any time.

5. COMPENSATION. LICENSEE shall be solely responsible for the payment of all fees in connection with LICENSEE's performance under this Agreement, including those set forth below.

5.1 License Fee. In order to compensate the LICENSOR for LICENSEE's entry upon and deployment of Small Cell and/or Equipment on City-owned Poles, LICENSEE shall pay to the LICENSOR, on an annual basis, an amount of two thousand dollars (\$2,000.00) per Site (the "License Fee"). LICENSEE shall make the first payment of License Fee under any Site Permit within thirty (30) days of the applicable Commencement Date for the applicable Site. Thereafter, License Fees shall be paid on or before each anniversary of the Commencement Date during the Site Permit Term.

5.2 License Fee Adjustment. Effective on the first anniversary of the Commencement Date of any Site Permit Term, and continuing annually thereafter during the applicable Site Permit Term, the License Fee shall be subject to adjustment ("Adjusted License Fee") of 3% every year.

5.3 Business License. The LICENSEE shall obtain a Business License from the City and pay all applicable taxes, or fees associated with performance of the terms contained herein.

5.4 Payment. LICENSEE shall pay the License Fee monthly to City at the City Treasurer's Office, P.O. Box 711, Huntington Beach, California, 92648, or at such other place or places as City may from time-to-time designate by written notice delivered to LICENSEE. LICENSEE shall pay the License Fee, which must be received by the City Treasurer within fifteen (15) calendar days ("Due Date") on the anniversary of the Commencement Date, or on the next business day if the fifteenth day falls on a weekend or holiday. License Fee mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt. LICENSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

Notwithstanding the foregoing, upon agreement of the parties, LICENSEE may pay License Fee by electronic funds transfer and in such event, the LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

5.5 Delinquent Payment. If LICENSEE fails to pay any amounts due pursuant to this Agreement after sixteen (16) days from the Due Date, or the next business day if the day falls on a weekend or holiday, LICENSEE shall pay the following late charge and penalty: a late payment charge shall equal ten percent (10%) of the amount due to the City, or ten percent (10%) of the amount remaining unpaid to the City if a portion was timely paid. Interest shall accrue on all unpaid monies due, exclusive of late payment charges, at the rate of one half of one percent per month of the total amount due from the date the amount becomes delinquent until the date that all delinquent amounts are paid to the City.

5.6 Additional Remedies. The remedy provisions set forth in §5.5 above are not exclusive, and do not preclude the LICENSOR from pursuing any other or additional remedy including terminating any Site Permit issued thereto in the event that payments for such Site Permit(s) become overdue by more than sixty (60) days.

6. CONSTRUCTION. LICENSEE shall comply with all applicable Federal, State, and City codes related to the construction, installation, operation, maintenance, and control of LICENSEE's Small Cell and/or Equipment installed in the ROW. Except as otherwise provided herein, LICENSEE shall not attach, install, maintain, or operate any Small Cell and/or Equipment in or on the ROW without obtaining all City permits including a Site Permit and with additional prior written approval of an authorized representative of the LICENSOR for each location whose approval is required by the City Municipal Code.

6.1 Obtaining Required Site Permits; Modifications. Prior to the installation of LICENSEE'S Small Cell and/or Equipment, LICENSEE and LICENSOR shall conduct a field inspection of all Pole locations to determine the feasibility of installing a Small Cell at the location. If the LICENSOR determines aesthetic issues/impacts (or any other negative impact) at the location, the City may at its sole discretion refrain from including the location in this Agreement. LICENSEE shall apply for and obtain all appropriate permits and pay all applicable permit fees and/or taxes as a condition precedent to installation of any Small Cell and/or Equipment contemplated in this Agreement. LICENSEE shall maintain all appropriate permits and pay all applicable permit fees and/or taxes.

6.2 Relocation and Displacement of Equipment. LICENSEE understands, acknowledges and agrees that LICENSOR may require LICENSEE to relocate one or more of its Small Cell and/or Equipment installations. LICENSEE shall at LICENSOR's direction and upon one hundred eighty (180) days prior written notice to LICENSEE for subsection (a) below, or upon ninety (90) days prior written notice to LICENSEE for subsections (b) and (c) below, relocate such Small Cell and/or Equipment at LICENSEE's sole cost and expense whenever LICENSOR reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a LICENSOR or other public agency project; (b) because the Small Cell and/or Equipment is interfering with or adversely affecting proper operation of LICENSOR-owned Poles, traffic signals, communications, or other Municipal Facilities; or (c) to protect or preserve the public health or safety as determined by the LICENSOR at its sole discretion. In any such case, LICENSOR shall use reasonable efforts to afford LICENSEE a reasonably equivalent alternate location. If LICENSEE shall fail to relocate any Small Cell and/or Equipment as requested by the LICENSOR in accordance with the foregoing provision, LICENSOR shall be entitled to remove or relocate the Small Cell and/or Equipment at LICENSEE's sole cost and expense, without

further notice to LICENSEE. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. To the extent the LICENSOR has actual knowledge thereof, the LICENSOR will attempt promptly to inform LICENSEE of the displacement or removal of any Pole on which any Small Cell and/or Equipment is located. If the Municipal Facility is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the LICENSOR will have no obligation to repair or replace such Municipal Facility for the use of LICENSEE's Equipment and assume no loss whatsoever to LICENSEE. LICENSEE shall bear all risk of loss as a result of damaged or downed Municipal Facilities pursuant to §6.8 below, and may choose to replace such Municipal Facilities pursuant to the provisions of §4.1.5 above. Nothing in this Agreement shall limit LICENSOR's right to act to protect the public if the condition of a Municipal Facility, Pole, Small Cell, or Equipment at any Site poses an immediate threat to public health or safety. In such instances, if LICENSOR is unable to provide LICENSEE with prior notice, LICENSOR shall provide LICENSEE with notice about the action LICENSOR took to protect the public from an immediate threat at any Site within a reasonable period of time after LICENSOR takes such action.

6.3 Damages Caused by LICENSEE. LICENSEE shall, at its sole cost and expense and to the satisfaction of the LICENSOR: (a) remove, repair or replace any of its Small Cell and/or Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, City Pole or other property, whether public or private, caused by LICENSEE, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Small Cell and/or Equipment, reasonable wear and tear excepted. If LICENSEE does not remove, repair or replace such damage to its Small Cell and/or Equipment or to ROW, City Pole or other property, the LICENSOR shall have the option, upon thirty (30) days' prior written notice to LICENSEE, to perform or cause to be performed such removal, repair, or replacement on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the LICENSOR. If such damage causes a public health or safety emergency, as reasonably determined by the LICENSOR, the LICENSOR may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work only involves reattachment of LICENSEE's Small Cell and/or Equipment to a Pole or repair of the Pole itself, and shall not include any technical work on LICENSEE's Equipment. Upon the receipt of a demand for payment by the LICENSOR, LICENSEE shall within thirty (30) days of such receipt reimburse the LICENSOR for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

6.4 Removal of Equipment. Within ninety (90) days after the expiration or earlier termination of this Agreement, and/or a Site Permit, LICENSEE shall at its sole cost, safely and carefully remove the Small Cell and/or Equipment from all Municipal Facilities and ROW. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work pursuant to this Section, then the LICENSOR, upon written notice to LICENSEE, shall have the right at the LICENSOR's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. After the LICENSOR receives the reimbursement payment from LICENSEE for the removal work performed by the LICENSOR, the LICENSOR shall promptly make available to LICENSEE the property belonging to LICENSEE and removed by the LICENSOR pursuant to this Section at no liability to the LICENSOR. If the LICENSOR does not receive reimbursement payment from LICENSEE within such thirty (30) days, or if LICENSOR does not elect to remove such items at the LICENSOR's cost after LICENSEE's failure to so remove pursuant to this Section, or if LICENSEE does not remove LICENSEE's property within thirty (30) days of such property having been made available by the LICENSOR after LICENSEE's payment of removal reimbursement as described above, any items of LICENSEE's property remaining on or about the ROW, Municipal Facilities, or stored by the LICENSOR after the LICENSOR's removal thereof may, at the LICENSOR's option, be deemed abandoned and the LICENSOR may dispose of such property in any manner by Law. If LICENSOR incurs e-waste and hazardous disposal fees as part of any Federal, State, or Local regulatory environmental requirements, LICENSOR shall have the option to bill LICENSEE for said disposal fees and LICENSEE agrees to reimburse LICENSOR within thirty (30) days of receiving reimbursement request. Alternatively, the LICENSOR may elect to take title to abandoned property, provided that LICENSEE shall submit to the LICENSOR an instrument satisfactory to the LICENSOR transferring to the LICENSOR the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.5 Risk of Loss. LICENSEE acknowledges and agrees that LICENSEE, subject to the terms of this Agreement bears all risks of loss or damage or relocation or replacement of its Small Cell and/or Equipment and materials installed in the ROW or on Municipal Facilities pursuant to this Agreement from any cause, and the LICENSOR shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the LICENSOR's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the LICENSOR, including, without limitation, each of its elected officials, department directors,

managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in §7.2 below.

In the event of damage by fire or other casualty to the Municipal Facilities, Poles, Small Cell, or Equipment that cannot reasonably be expected to be repaired within forty-five (45) days following same, or, if the Municipal Facilities, Poles, Small Cell, or Equipment are damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required at Municipal Facilities or Poles to permit LICENSEE to resume its operations, terminate the Site Permit upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause the Site Permit 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 Site Permit and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Site Permit. 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 LICENSEE's operations are impaired.

7. INDEMNIFICATION AND WAIVER. LICENSEE agrees to indemnify, defend, protect, and hold harmless the City of Huntington Beach, its City Council or any elected official its members, officers, officials, employees or agents (collectively, the "Indemnitees") from and against any and all claims, demands, losses, including Pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including attorney's fees and costs of defense (collectively, the "Losses") resulting from this Agreement, except to the extent that the Losses are caused by the Indemnitees' negligence or willful misconduct.

7.1 Waiver of Claims. LICENSEE waives any and all claims, demands, causes of action, and rights it may assert against the LICENSOR on account of any loss, damage, or injury to any Small Cell and/or Equipment or any loss or degradation of the Telecommunications Services or Information Service as a result of any event or occurrence which is beyond the reasonable control of the LICENSOR.

7.2 Waiver of Subrogation. 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 Municipal Facilities, Small Cell or to the ROW, 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 Municipal Facilities, Small Cell or the ROW shall waive the insurer's right of subrogation against the other party.

7.3 Limitation on Consequential Damages. Neither party shall be liable to the other, or any of their respective agents, representatives, 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

8. SECURITY FOR PERFORMANCE. Before any construction begins in the ROW by LICENSEE, and if requested by LICENSOR, LICENSEE shall provide the LICENSOR with performance bonds, and if considered necessary by the LICENSOR, payment bonds, in amounts equal to the full amount of the replacement of each Pole. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the LICENSOR, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in the State of California, and acceptable to the LICENSOR and shall be kept in place for the duration of the work.

9. INSURANCE. LICENSEE shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, contractual liability, personal injury and products completed operations; and Commercial Automobile Liability insurance covering all owned non-owned and hired vehicles with a limit of \$1,000,000 each accident for bodily injury and property damage. In any case, the Commercial General Liability insurance policy shall name the LICENSOR, its commission members, officers, and employees as additional insured as respects any covered liability arising out of LICENSEE's performance of work under this Agreement. Coverage shall be in an occurrence from and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer LICENSEE shall use its best efforts to provide the LICENSOR with thirty (30) days prior written notice of cancellation. LICENSEE shall be responsible for notifying the LICENSOR of such change or cancellation.

9.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, LICENSEE shall file with the LICENSOR the required certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that LICENSEE's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the LICENSOR may possess, including any self-insured retentions the LICENSOR may have; and any other insurance the LICENSOR does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) that LICENSEE's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the LICENSOR.

The certificate(s) of insurance with endorsements and notices shall be mailed to the LICENSOR at the address specified in §10 below.

9.2 Workers' Compensation Insurance. LICENSEE shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the LICENSOR with a certificate showing proof of such coverage.

9.3 Insurer Criteria. Any insurance provider of LICENSEE shall be admitted and authorized to do business in the State of California and shall carry a minimum rating assigned by *A.M Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "VII."

9.4 Severability of Interest. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

If to the LICENSOR:
City of Huntington Beach
Office of Business Development
Attention: Deputy Director
1685 Main Street
Huntington Beach, CA 90401

if to LICENSEE:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Small Cell License Agreement, Huntington Beach, CA
Fixed Asset #: 14345603
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Re: Small Cell License Agreement, Huntington Beach, CA
AT&T Legal Department – Network
208 S. Akard Street,
Dallas, TX 75202-4206

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

11. RESERVED

12. ASSIGNMENT. This Agreement shall not be assigned by LICENSEE without the express written consent of the LICENSOR, which may be withheld at LICENSOR's sole reasonable discretion except for assignment to an Affiliate of LICENSEE.

13. RECORDS; AUDITS.

13.1 Records Required by Code. LICENSEE will maintain complete records pursuant to all applicable Laws.

13.2 Additional Records. The LICENSOR may require such additional reasonable non-confidential information, records, and documents from LICENSEE from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 Production of Records. LICENSEE shall provide such records within twenty (20) business days of a request by the LICENSOR for production of the same unless additional time is reasonably needed by LICENSEE, in which case, LICENSEE shall have such reasonable time as needed for the production of the same. If any person other than LICENSEE maintains records on LICENSEE's

behalf, LICENSEE shall be responsible for making such records available to the LICENSOR for auditing purposes pursuant to this Section.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting LICENSEE. LICENSEE shall be available to the staff employees of any LICENSOR department having jurisdiction over LICENSEE's activities 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The LICENSOR may contact by telephone the network control center operator at telephone number (877) 244-7889 regarding such problems or complaints.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles with jurisdiction in the courts of the County of Orange, and where applicable, federal law. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California.

14.5 Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall NOT be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees,

14.6 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.7 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder

and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 4.2 above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.8 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.9 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof: and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

14.10 Public Records. LICENSEE acknowledges that information submitted to the LICENSOR may be open to public inspection and copying under state law.

14.11 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.12 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the LICENSOR with respect to third parties shall remain as imposed by state law.

14.13 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.14 Effect of Acceptance. LICENSEE (a) accepts and agrees to comply with this Agreement and all applicable federal, state and local laws and regulations; (b) agrees that this Agreement was granted pursuant to processes and procedures consistent with applicable law; and (c) agrees that it will not raise any claim to the contrary or allege in any claim or proceeding against the LICENSOR that at the time of acceptance of this Agreement any provision, condition or term of this Agreement was unreasonable or arbitrary, or that at the time of the acceptance of this Agreement any such provision, condition or term was void or unlawful or that

the LICENSOR had no power or authority to make or enforce any such provision, condition or term.

14.15 Time is of the Essence. Time is of the essence with regard to the performance of all of the parties' obligations under this Agreement.

14.16 Compliance with Law. LICENSEE shall at all times comply with all applicable Federal, State and Local laws and regulations, including any permit requirements or conditions.

[Signature page follows]

18-6437/178305.docx/MV

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

“LICENSEE”

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

By: AT&T Mobility Corporation
Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

“LICENSOR” and “CITY”

CITY OF HUNTINGTON BEACH,
Municipal corporation of the State of
California



City Manager

APPROVED AS TO FORM:



City Attorney *MV*

COUNTERPART

Exhibits:

Exhibit A – GPS Coordinates & Depiction
Exhibit B – Map

Exhibit "A"

GPS Coordinates

Candidate Name	Candidate Number	Address / Location	Latitude	Longitude	Structure Owner	PoleID	Comment
CRAN_RLOS_HBNPB_001	1C	Candidate across 130' W of NEC of Pacific Coast Highway & 15th St.	33.663606	-118.011063	City of Huntington Beach	TBD	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_002	2D	3rd Streetlight from Pacific Coast Highway, Southside of Seapoint	33.680861	-118.030980	City of Huntington Beach	TBD	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_003	3B	West corner of Orange Ave & 14th St.	33.665547	-118.007550	City of Huntington Beach	TBD	Available - Reserved for AT & T
CRAN_RLOS_HBNPB_005	5A	W/S/O Seapoint St. 150' W/O Doral Dr.	33.683783	-118.023140	City of Huntington Beach	4095617E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_006	6A	North corner of Pacific Coast Highway & 19th St.	33.666151	-118.014202	City of Huntington Beach	4379958E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_007	7A	155' SE of C/L of Pacific Coast Hwy & Goldenwest St.	33.668131	-118.016910	City of Huntington Beach	4346084E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_009	9A	Center median of Palm Ave. 915' NW of C/L of Cherryhill Dr. & Palm Ave.	33.677558	-118.025629	City of Huntington Beach	2340036E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_010	10A	E/S/O Delaware St. at Detroit Ave.	33.660386	-117.992629	City of Huntington Beach	1927773E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_012	12C	SWC of Adams & Park Street	33.671993	-118.000285	City of Huntington Beach	441032HB	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_013	13A	W/S/O California Street B/W Toronto Ave. & Springfield Ave.	33.674405	-117.994163	City of Huntington Beach	4076456E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_014	14A	SW Corner of Newland St. at Jenny Dr.	33.655731	-117.979816	City of Huntington Beach	1995554E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_015	15B	W/S/O Cupar Lane, 335' NW of C/L of Scone Dr.	33.654987	-117.983678	City of Huntington Beach	1729310E	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_016	16B	SEC of Beach Blvd. & Sunrise Dr.	33.653882	-117.988111	City of Huntington Beach	463026HB	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_018	18C	Parking lot light, 90' SE of Pacific Coast Highway and Twin Dolphin	33.651423	-117.992992	City of Huntington Beach	TBD	Available - Reserved for AT&T
CRAN_RLOS_HBNPB_029	29B	3,245' NW of C/L of Goldenwest St. & Pacific Coast Highway, in parking lot	33.673545	-118.024951	City of Huntington Beach	TBD	Available - Reserved for AT&T
CRAN_RLOS_BEACH_004	4A	East Corner of South Pacific Ave. & Broadway	33.71735	-118.070952	City of Huntington Beach	2046726E	Available - Reserved for AT&T

Exhibit “B”

Map

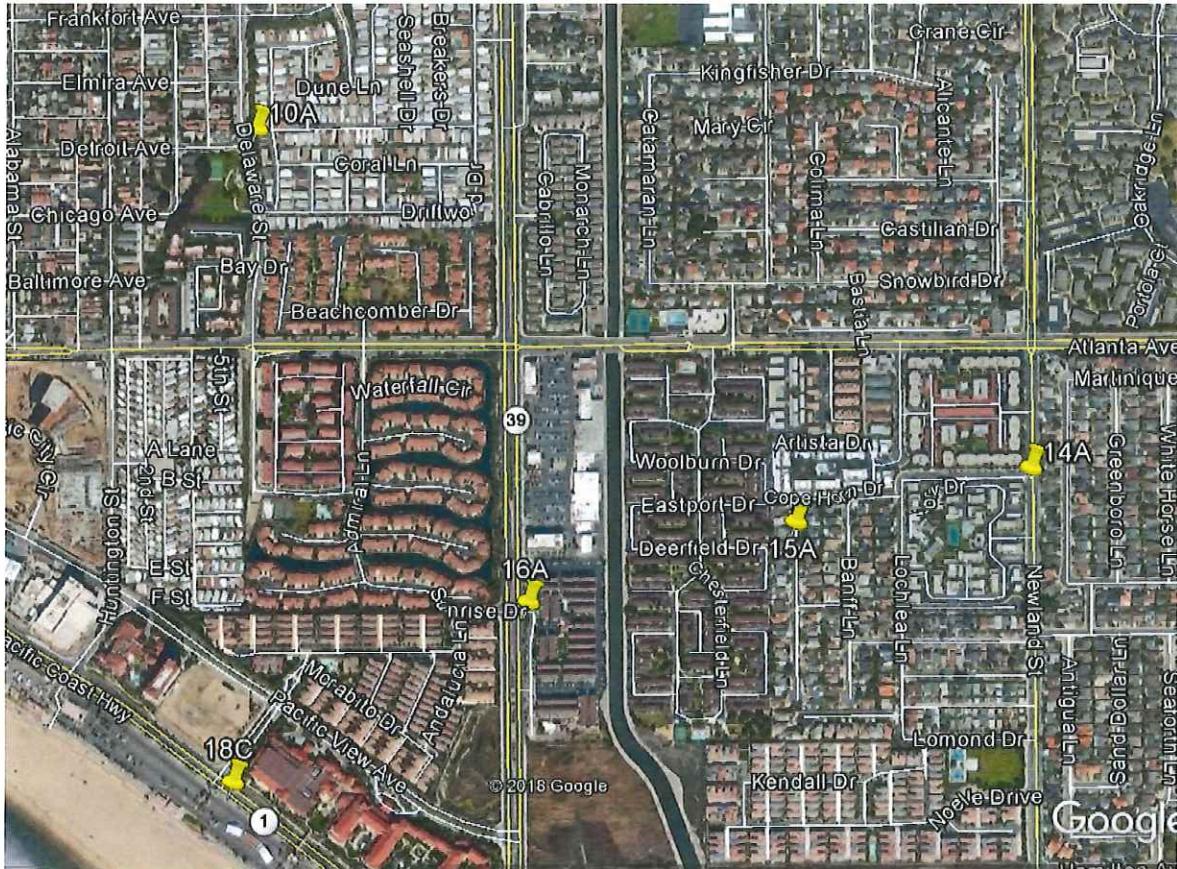
EXHIBIT 'B'

AT&T Overall Location Map



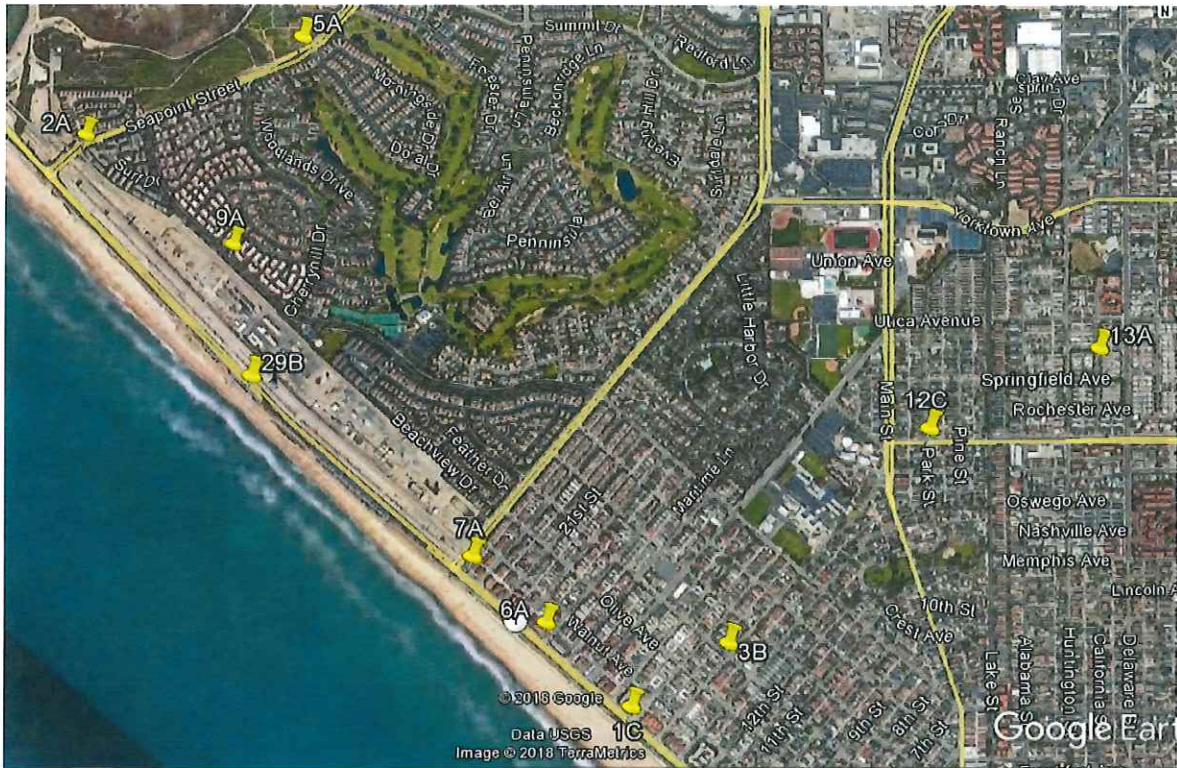
AT&T Site Location Map

(Closer Detail)



AT&T Site Location Map

(Closer Detail)



AT&T Site Location Map

(Closer Detail)

