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CITY COUNCIL AGENDA ITEM

Date: January 8, 2019 

To: Honorable Mayor and Troy City Council Members

From: Lori Grigg Bluhm, City Attorney

Subject: Cingular Wireless (AT & T) Master License Agreement-Small Cells

With the passage of the Small Wireless Facilities Act, MCL 460.1301 (2018 PA 365), the wireless industry is now able to place small cells on City owned facilities in the rights of way, and the City is limited in what it can collect for this use of City owned property. The law also allows for new poles to be placed in the City's rights of way by the wireless industry. The state law was designed to increase wireless communication capabilities throughout the State.

The City's powers are therefore limited by this new State law, which pre-empts our local regulation. However, after the passage of the new State law, the City started negotiations with Cingular Wireless (previously AT & T) to develop a Master License Agreement for small cells that it proposes to locate on City owned infrastructure. This Agreement covers all poles in the City, and allows Cingular Wireless to apply for an engineering permit for each proposed small cell or new pole location. This Agreement follows the previous Master License Agreement negotiated with Extenet for small cells near the Somerset Mall, but it has been modified to be compliant with the Small Wireless Facilities Act. It also has a re-opener provision, in the event that the State law is subsequently modified to allow for a more equitable annual rate, since \$30 per pole does not cover the City's costs.

In addition to the presence of City Administration representatives, the attorney for Cingular Wireless has offered to be present for the City Council meeting to address any questions about this Master License Agreement.

**MASTER LICENSE AGREEMENT
FOR ATTACHMENTS TO CITY OWNED FACILITIES**

This Master License Agreement for Attachments to City Facilities (“Agreement”) dated _____, 2020 (the “Effective Date”) is made by and between the City of Troy, Michigan (the “City”), and New Cingular Wireless PCS, LLC (“Licensee”) (collectively referred to as the “Parties”).

RECITALS

WHEREAS, the City owns, operates and maintains certain Facilities located in the City Right-of-Way; and

WHEREAS, Licensee proposes to install and maintain Licensee’s Wireless Attachments on or within City Facilities to provide Wireless Services; and

WHEREAS, the City is willing to grant Licensee a non-exclusive, revocable license under which the City will issue Permits authorizing the placement or installation of Licensee’s Wireless facilities on or within specified City Facilities, provided that the City may in its sole discretion, for reasons relating to insufficient capacity, aesthetics, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to issue a Permit for any Wireless support structures so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties; and

WHEREAS, the City’s lease of a Wireless support structure is a commercial transaction involving the rental of City Facilities and the City intends to act in a non-discriminatory manner consistent with the Act.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, the sufficiency of which is acknowledged, and with the intention to be legally bound hereby, the City and Licensee agree as follows:

1. DEFINITIONS

- 1.1** “Act” means the Small Wireless Facilities Act, 2018 PA 365, MCL 460.1301, et seq, as the same may be amended from time to time.
- 1.2** “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- 1.3** “Applicable standards means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and includes but is not limited to the most current versions of National Electric Safety Code (NESC), the National Electrical Code (NED), and the regulations of the Occupational Safety and Health Administration (OSHA), each of which is incorporated by reference in this Agreement.
- 1.4** “Applicant” means a Wireless provider or Wireless infrastructure provider that submits an application described in this Agreement.

- 1.5** “Attachment(s)” means Licensee’s Communications Equipment that is placed directly on or within City Facilities.
- 1.6** “Authority”, unless the context implies otherwise, means the City of Troy, Michigan to the extent authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in this ordinance.
- 1.7** “Authority pole” means a utility pole owned or operated by an authority and located in the ROW.
- 1.8** “Colocate” means to install, mount, maintain, modify, operate, or replace Wireless facilities on or adjacent to a Wireless support structure or utility pole. “Collocation” has a corresponding meaning.
- 1.9** “Fee” means an authority one-time per small cell site charge for application processing.
- 1.10** “Rate” means an authority annual charge per site.
- 1.11** “Historic district” means an officially designated historic district.
- 1.12** “Make-ready work” means work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.
- 1.13** “Permit” means written or electronic authorization of the City for Licensee to make or maintain Attachments to specific City Facilities pursuant to the requirement of this Agreement and any applicable City code or regulations.
- 1.14** “Micro Wireless facility” means a Small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.
- 1.15** “Public right-of-way” or “ROW” means the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement dedicated for compatible uses. Public right-of-way does not include any of the following:
- 1.15.1.1** A private right-of-way.
 - 1.15.2** A limited access highway.
 - 1.15.3** Land owned or controlled by a railroad as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.
- 1.16** “Small cell wireless facility” means a Wireless facility that meets both of the following requirements:
- 1.16.1.1** Each antenna is not more than 6 cubic feet in volume.

1.16.1.2 All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume, except the following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

1.17 “Utility pole” means a pole or similar structure that is or may be used to support Small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground, and does not include any traffic control signals (as defined in the Manual on Uniform Traffic Control Devices).

1.18 “Wireless facility” means wireless equipment that enables the provision of wireless services, including but not limited to: radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility does not include coaxial or fiber-optic cable between utility poles or Wireless support structures.

1.19 “Wireless provider” is a provider of wireless services and a “wireless infrastructure provider” is an installer of wireless equipment, Wireless facilities or Wireless support structures at small cell sites and, both terms are interchangeable terms for purposes of this Agreement.

1.20 “Wireless services” means any services provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

1.21 “Wireless support structure” means a freestanding structure designed to support or capable of supporting Small cell wireless facilities. Wireless support structure does not include a utility pole.

1.22 “Wireline backhaul facility” means a facility used to transport services by wire or fiber-optic cable from a Wireless facility to a network.

2. SCOPE OF AGREEMENT

2.1 **Grant of License.** Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Permitted Wireless facilities on or within specified City Wireless support structures, as identified in the attached Exhibit A, which is incorporated by reference. Licensee may, in the future install Permitted Wireless facility Attachments under the same terms and conditions contained herein, consistent with the Act and with the administrative approval of Licensor, which shall not be unreasonably withheld beyond any period of sixty (60) days. Placement of Licensee’s Wireless facility Attachments on or within any specific Wireless support structure shall be at the sole discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties.

- 2.2 **Conflicting Provisions.** In the event of any conflict between this Agreement and any Permit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.
- 2.3 **Permit Issuance Conditions.** The City will issue any Permit(s) to Licensee only when the City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with the Act.
- 2.4 **Reserved Capacity.** Access to space on Wireless support structures will be made available to Licensee with the understanding that Wireless support structures may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit attachments on such Facilities or may within its discretion permit Attachments.
- 2.5 **No Interest in Property.** No use, however lengthy, of any Wireless support structures, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Wireless support structures. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of the City's rights to Wireless support structures. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 **Licensee's Right to Attach.** Nothing in this Agreement, other than a Permit issued pursuant to Article 5, shall be construed as granting Licensee any right to attach Licensee's Attachment(s) to or within any specific City Facility or portion of Wireless support structures .
- 2.7 **City's Rights over Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove its Facilities in the manner that will best enable it to fulfill any governmental requirements.
- 2.8 **Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand Facilities to accommodate Licensee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Facility or portion of Wireless support structures for use when such Wireless support structures are not needed for the City's or any other governmental service requirements.
- 2.9 **Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding Wireless support structure's Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee's Attachments.
- 2.10 **No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities after the termination of this Agreement.

2.11 Enclosures. Nothing in this Agreement shall authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any Wireless support structures upon which Licensee has made authorized Attachments.

3. FEES AND CHARGES

3.1 Payment of Fees and Charges. For authorized Attachments on authority poles covered under this Agreement, Licensee shall pay to the City an annual fee for a Permit to collocate Small cell wireless facility on a Wireless support structure of thirty (\$ 30.00) Dollars annually if the Wireless support structure is an existing structure or One Hundred and Twenty Five (\$125.00) Dollars per year if the Wireless support structure was erected by or on behalf of the Wireless provider. Every five (5) years after the execution of this Agreement, the rates reflected in this Section shall be increased by ten-percent (10%) of the rate and rounded to the nearest dollar.

3.1.1 Fees and charges will consist of the following:

1. Permit Application Fee – to reimburse the City for costs incurred for project management services, review of the Permit Application, and Site design approval, Licensee shall pay:

(a) Two Hundred (\$200.00) Dollars for each Small cell wireless facility alone OR

(b) Three Hundred (\$300.00) Dollars for each Small cell wireless facility that is attached to a new structure.

2. Make-Ready Work Costs – to reimburse the City for costs incurred by the City for any Make-Ready Work done to accommodate the Attachment on or within the City's Facilities.

3.2 Payment Period. Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the City pursuant to this Agreement within sixty (60) calendar days after the City issues the invoice.

3.3 Billing of Annual Attachment Fee. The Fee shall be based upon the period of time from January 1 until December 31 of each year, and will be billed or invoiced in five year increments.

3.4 Refunds. Unless otherwise agreed, no Fees and charges shall be refunded on account of any surrender of a Permit granted hereunder.

3.5 Advance Payment. The Permit Application Fee shall be due upon submission of the Permit Application.

3.6 Determination of Fees and Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by the City, the City may

either charge an additional ten percent (10%) to its costs or, if applicable, assess the Failure to Timely Transfer, Abandon or Removal Facilities Penalty Fee.

- 3.7 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days following written notice to Licensee shall constitute a material default of this Agreement.

4. SPECIFICATIONS

- 4.1 Installation/Maintenance of Small cell wireless facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Attachment(s) shall be installed and maintained in accordance with the City's applicable requirements and specifications. All of Licensee's Attachments must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing).

4.2 Authorized Attachment(s) and Installation Methods.

4.2.1 The City must approve the Attachment(s) that Licensee is authorized to place on the Wireless support structure. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Permit Application may be attached to any City Facility; Licensee may make repairs and replacements in the ordinary course of business with like kind equipment, with advance written notice to the City. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and Licensee will provide all necessary supporting documentation.

4.2.2 In no event may Licensee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by an approved Permit, or as is otherwise authorized in writing by the City.

4.2.3 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Licensee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment.

- 4.3 Tagging.** Licensee shall Tag all of its Small cell wireless facilities in accordance with any applicable federal, State and local regulations upon installation of such Attachment(s).

- 4.4 Interference.** Licensee shall not allow its Attachment(s) to impair the ability of the City or any existing third party to use Small cell wireless facilities, nor shall Licensee allow its Attachment(s) to interfere with the operation of any City or other governmental Facilities.

4.4.1 Licensee shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Licensee's Attachments.

4.4.2 In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If Licensee is unable or refuses to eliminate such interference, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located, and Licensee shall promptly remove the Attachment from the Facility.

4.4.3 Notwithstanding the foregoing, if equipment installed on a Facility by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee's Attachment at the City's Facility causes interference, either electronically or physically, with Licensee's previously installed Attachments then Licensee shall provide written notice to the City, allowing up to thirty (30) days to allow the third party, at the third party's sole cost and expense, to take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. If the third party or the City are unable or refuses to eliminate such interference, Licensee shall have the right to terminate the affected Permit and receive a reimbursement or any Fee advanced to City.

4.5 **Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

4.6 **Violation of Specifications.** If Licensee's Attachment(s), or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the City believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work.

4.7 **Tree Trimming and Removal.** Licensee shall not remove existing trees in the Public right-of-way. Any tree trimming shall be performed by a licensed arborist and performed in coordination with the City.

- 4.8 **No Ground Interference.** The Micro Wireless facility shall be attached to the utility pole and not placed on the ground.
- 4.9 **No Lighting.** If placed on a light pole, the Micro Wireless facility shall not be illuminated.
- 4.10 **Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Licensee on City Facilities.
- 4.11 **Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within three hundred and sixty-five (365) calendar days of the effective date of such right and any extension thereof, the City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. For purposes of this Paragraph, Licensee's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.

5. PERMIT APPLICATION PROCEDURES

- 5.1 **Permit Required.** Licensee shall not install any Attachments on or within any City Facilities without first applying for and obtaining a Permit pursuant to the applicable City requirements. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property (including, but not limited to City offices and parks), which must be separately negotiated.
- 5.1.1 Unless otherwise agreeable to the parties, the Licensee shall submit a Permit Application for every proposed Wireless support structure above-ground that shall be accompanied by: (i) photos of the subject Facility and surrounding location; (ii) equipment specifications; and (iii) a site sketch that depicts the proposed installation specifications such as attachment height, and attachment methods on the subject City Facility(ies).
- 5.2 **City Review of Permit Application.** Upon receipt of a properly executed Permit Application, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Permit Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. The City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Permit Application process shall be consistent with the following timeline.
- 5.2.1 **Review Period Shotclock.** The City shall review and respond to a properly executed and complete Permit Applications for attachment of a Wireless facility on any existing Wireless support structure within sixty (60) days of receipt; fifteen (15) days will be added to the review period, if the Authority has received an application from another Wireless provider within one (1) week of the Application in question; an additional fifteen (15) days may be provided if the Authority notifies the Applicant in writing that an extension is needed and provides the basis for the request. Within twenty-five (25) days of

receipt of the Permit Application from the Licensee, the City will notify the Applicant in writing that the Application is not complete.

5.2.2. Zoning Review. All Wireless support structures approved by the City and placed in the Right-of-Way are a permitted use and not subject to any zoning review.

5.2.3 Make-Ready work and access to Conduits shall be provided on a mutually agreeable, reasonable, and timely basis.

5.2.4 City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations.

5.3 **Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, and upon verification of compliance with this Agreement and state, local, and federal law, the City will sign and return the Permit Application, which shall serve as authorization for Licensee to make its Attachment(s).

5.4 If the City receives an Application for a new or replacement Wireless support structure, the City will have ninety (90) days to review and approve the Application subject to the addition of fifteen (15) days if another Wireless provider submits an application within one (1) week. An additional fifteen (15) day period shall apply if the City notifies the Applicant in writing that an extension is needed.

5.5 If the Application is denied, the City shall issue a written notice to the Applicant explaining the reasons for denial and the applicable codes on which the denial is based. The Applicant may revise the Application to cure the deficiencies. The Applicant may submit and the City shall have thirty (30) days to review and approve the Application.

5.6 **The City retains the right to require evidence or certification that Applicant is compliant with FCC Radio Frequency emission regulations.**

6. TRANSFERS

6.1 **Required Transfers of Licensee's Attachments.** If the City reasonably determines for Public Safety purposes that a transfer of Licensee's Wireless facility is necessary, Licensee agrees to allow such transfer or remove the affected Wireless facility. In such instances, the City shall require Licensee to perform such transfer or removal at its own expense within thirty (30) calendar days after receipt of notice from the City. If Licensee fails to transfer its Wireless facility within thirty (30) calendar days after receiving such notice from the City, the City shall have the right to transfer Licensee's Wireless facility using its personnel and/or contractors. The City shall not be liable for damage to Licensee's Wireless facility except to the extent provided in Paragraph 14. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within five (5) business days of the occurrence.

7. MODIFICATIONS AND/OR REPLACEMENTS

- 7.1 Licensee's Action Requiring Modification/Replacement.** In the event that any City Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Licensee's Attachment, the City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the City the actual cost of any Make-Ready Work, performed by the City, the City, at its discretion, may require advance payment of the entire cost. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved. Licensee may perform the required Make-Ready Work, at its option. In the event a new Wireless support structure is constructed by the Licensee, ownership of that structure shall pass immediately to the City at no cost. No bill of sale shall be required for the transaction.
- 7.2 Treatment of Multiple Requests for Same Facility.** If the City receives Permit Applications for the same Facility from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Permit Application received. If it is possible to accommodate more than one Attachment request through a modification the City will allocate among such licensees the applicable costs associated with such modification or replacement.
- 7.3 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming or Conduit clearing) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:
- 7.3.1** If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee's Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space on or within the Facilities accessible to Licensee.

7.3.2 If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Equipment pursuant to this Paragraph.

7.3.3 If the modification or the replacement of a Facility is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Equipment.

7.3.4 If a Facility must be modified or replaced for other reasons unrelated to the use of the Facility by Attaching Entities (*e.g.*, storm, accident, deterioration), the City shall pay the costs of the modification or replacement of the Facility; provided, however, that Licensee shall be responsible for the costs of rearranging or transferring its Attachment.

8. City Not Required to Relocate. No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.

9. ABANDONMENT OR REMOVAL OF CITY FACILITIES

9.1 Notice of Abandonment or Removal of City Facilities. If the City desires at any time to abandon, remove or underground any City Facilities to which Licensee's Attachments are attached, it shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 9.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachment removed and/or transferred from the Facility at Licensee's expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee's Equipment.

9.2 Option to Purchase Abandoned Poles. Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate negotiated with the City. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City's notice of abandonment that Licensee desires to purchase the abandoned Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 9.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

10. REMOVAL OF LICENSEE'S ATTACHMENTS

10.1 Removal on Expiration/Termination. At the expiration or other termination of this License Agreement or individual Permit(s), Licensee shall remove its Attachment(s) from the affected Facilities at its own expense. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear. If Licensee fails to remove such Equipment within sixty (60) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Equipment removed at Licensee's expense.

10.2 Licensee Removal. Licensee may, at any time, remove its Attachment(s) from any City Facility, provided it gives the City at least fourteen (14) days prior written notice. Provided, the City may require Licensee to leave in place any conduit, innerduct or similar Communications Equipment within a City Conduit in order to prevent damage to City Facilities. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear.

11. TERMINATION OF PERMIT

11.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate its Attachment on public or private property at the Site of the particular Facility covered by the Permit or if Licensee installs any wireless attachment without obtaining a City Permit as required here.

11.2 Surrender of Permit. Licensee may at any time surrender any Permit for Attachment and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 16. No refund of any fees or charges will be made upon removal. If Licensee surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within sixty (60) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

12. INSPECTION OF LICENSEE'S ATTACHMENTS

- 12.1 Inspections.** The City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Permit, Licensee shall pay an unauthorized access penalty fee of three (3) times the then current annual rate for the attachment in addition to applicable Permit and Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection.
- 12.2 Notice.** The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.
- 12.3 No Liability.** Inspections performed under this Article 12, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 12.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

13. REPORTING REQUIREMENTS

Concurrently with Licensee's Annual Attachment Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is surrendering a Permit pursuant to Paragraph 11.2

14. LIABILITY AND INDEMNIFICATION

- 14.1 Liability.** The City reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City's Facilities at Licensee's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.
- 14.2 Defense, Indemnity and Insurance.** All applicant Wireless providers shall:
- (a) Defend, indemnify, and hold harmless the authority its officers, agents, and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any Wireless facilities, Wireless support structures, or utility poles to the extent caused by the applicant and all entities acting on its behalf including but not limited to its contractors, its subcontractors, and the officers, employees, or agents of any of

these, except as to liabilities or losses due to or caused by the sole negligence of the authority or its officers, agents, or employees.

14.3 Procedure for Indemnification.

14.3.1 The City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the City, the City shall give the notice to Licensee no later than fifteen (15) calendar days after the City receives written notice of the action, suit or proceeding.

14.3.2 The City's failure to give the required notice will not relieve Licensee from its obligation to indemnify the City unless and only to the extent Licensee is materially prejudiced by such failure.

14.4 Liens. There shall be no liens placed upon any City Facility as a result of any claim against Licensee., Licensee agrees, within one hundred and twenty (120) days of the filing of such lien, to cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to the City; provided, however, that Licensee shall have the right to contest in good faith said mechanics' liens, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

15. DUTIES, RESPONSIBILITIES, AND EXCULPATION

15.1 Duty to Inspect. Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities.

15.2 Knowledge of Work Conditions. By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

15.3 DISCLAIMER. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY'S FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15.4 Duty of Competent Supervision and Performance. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall

furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

16. INSURANCE

16.1 Policies Required. At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

16.1.1. Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Michigan law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation in favor of the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

16.1.2 Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

16.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

16.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

16.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

16.2 Qualification; Priority; Contractors' Coverage. The insurer must be authorized to do business under the laws of the State of Michigan and have an "A" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.

16.3 Certificate of Insurance; Other Requirements. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a Certificate of Insurance

(“Certificate”) and, upon request, certified copies of the required insurance policies. The Certificate shall reference this Agreement and workers’ compensation and property insurance waivers of subrogation required by this Agreement. The City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by the City. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request.

16.4 Limits. The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.

16.5 Prohibited Exclusions. No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City’s employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee’s contractors or the contractors’ employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

16.6 Deductible/Self-insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

17. AUTHORIZATION NOT EXCLUSIVE

The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

18. ASSIGNMENT

18.1 Limitations on Assignment. Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding, Licensee may, upon written notice to the City, assign this

Agreement and/or any or all of its rights and obligations under this Agreement to any Affiliate of Licensee. Licensee shall secure the written approval from the City, which shall not be unreasonably withheld for a transfer or merger to any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or any purchaser of all or substantially all of the Licensee's assets used to provide Communications Services to residents and businesses located in the City of Troy, Michigan. An "affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

18.2 Obligations of Assignee/Transferee and Licensee. No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.

18.3 Sub-licensing. Without the City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on or within City Facilities. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee's Attachments for third party Wireless providers utilizing Licensee's Communications Services is not subject to this Paragraph 18.3. Furthermore, the use of Licensee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or an expansion of the equipment or overlashing is not subject to this Paragraph 18.3.

19. FAILURE TO ENFORCE

Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

20. ISSUE RESOLUTION PROCESS

20.1 Dispute Resolution. Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach

thereof, the parties shall be entitled to pursue all available remedies at law or equity. Each party will bear its own costs for dispute resolution activity.

20.2 Confidential Settlement. Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information to the extent allowed by law.

20.3 Business As Usual. Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement except as otherwise provided by law. (FOIA example)

21. TERMINATION OF AGREEMENT

21.1 Notwithstanding the City's rights under Article 12, the City shall have the right, pursuant to the procedure set out in Paragraph 21, to terminate this entire Agreement, or any Permit issued hereunder, whenever Licensee is in default of any material term or condition of this Agreement, including but not limited to the following circumstances:

21.1.1. Construction, operation or maintenance of Licensee's Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or

21.1.2 Construction, operation or maintenance of Licensee's Attachment(s) after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or

21.1.3 Construction, operation or maintenance of Licensee's Attachment(s) without the insurance coverage required under Article 16.

21.1.4 The expiration, termination or revocation of Licensee's franchise or any other required regulatory authorization (as required by Article 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

21.1.5 The continuation of any mechanics or other liens on City property, as set forth in Section 14.4.

21.2 The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 21.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

21.3 If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate this Agreement or any Permit(s) granted hereunder. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the City may seek removal of Licensee's Attachments pursuant to the terms of Article 11, with respect to specific Facilities or from the City's entire system. In such instance, Licensee shall remain liable for and pay all fees and

charges accrued pursuant to the terms of this Agreement to the City until Licensee's Attachments are actually removed.

22. TERM OF AGREEMENT

Subject to Section 21, this Agreement shall be effective for a term beginning on the effective date of this Agreement and ending ten (10) years from the Effective Date. Thereafter, this Agreement will automatically renew for up to two (2) additional five (5) year terms, unless the Licensee notifies the City of its intent to terminate the Agreement at least one hundred twenty (120) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Agreement and not as a new agreement. The Fee shall be paid in accordance with Section 3.1.

22.1 Upon written request of either party, this Agreement shall be renegotiated at any time upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder.

22.2 In the event the parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

22.3 Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Attachments as provided for in Article 14.

23. AMENDING AGREEMENT

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

24. NOTICES

24.1 Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

To the City:

City of Troy
City Manager
500 W. Big Beaver Rd.
Troy, MI 48084

To Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
RE: Cell Site #: _____, Cell Site Name;
Fixed Asset No. _____
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, Georgia 30319

With a copy to:
City of Troy
City Attorney
500 W. Big Beaver Rd.
Attn: _____
Troy, MI 48084

With a copy to:
New Cingular Wireless PCS, LLC
Attn: Legal Dept., Network Operations
208 S. Akard Street
Dallas, Texas 75202-4206

or to such other address as either party, from time to time, may give the other party in writing.

- 24.2** The above notwithstanding in advance the parties may agree to utilize electronic communications such as email for notifications related to the Permit Application and approval process and necessary transfer or Facility modifications.
- 24.3** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests. Failure to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances.

25. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee's Attachments on or within City Facilities within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

26. SEVERABILITY

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

27. GOVERNING LAW

The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Michigan.

28. INCORPORATION OF RECITALS

The recitals stated above are incorporated into and constitute part of this Agreement.

29. PERFORMANCE BOND

On execution of this Agreement, Licensee shall provide to the City a performance bond or letter of credit in an amount of Ten Thousand Dollars (\$10,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's

performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments on or about City Facilities.

30. FORCE MAJEURE

30.1 In the event that either the City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

30.2 The City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 30.1, provided that Licensee present the City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on.

31. RELATIONSHIP OF PARTIES;

Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

32. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

33. SURVIVAL

Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

34. CITY CHARTER PROVISION REGARDING LONG TERM LEASES

The parties acknowledge that Troy's Charter, Section 12.3- Restriction on Powers to Lease Property, could result in the initiation of a citizen initiated referendum process, since this Agreement is for the use of public property and extends beyond three years.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

City of Troy, Michigan	LICENSEE, New Cingular Wireless PCS, LLC a Delaware Limited Liability Company
By: _____ Mayor	By: _____ AT&T Mobility Corporation, Its Manager
By: _____ City Clerk	Name: _____ Title: _____

Exhibit A

Permitted Attachments

See attached