

**LICENSE AGREEMENT FOR WIRELESS INSTALLATIONS
ON CERTAIN PUBLIC STRUCTURES**

BETWEEN

**NEW CINGULAR WIRELESS PCS, LLC
D/B/A AT&T MOBILITY**

AND

CITY OF FISHERS

EFFECTIVE DATE: MAY 13, 2019

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**LICENSE AGREEMENT FOR WIRELESS INSTALLATIONS
ON CERTAIN PUBLIC STRUCTURES**

This License Agreement For Wireless Installations on Certain Public Structures (the "Agreement") is made and entered into as of May 13, 2019 ("Effective Date") by and between the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("Licensor") and NEW CINGULAR WIRELESS PCS, LLC a Delaware limited liability company d/b/a AT&T Mobility ("Licensee"). Licensor and Licensee shall be referred to hereafter individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Licensee seeks to affix wireless communication antennas and related equipment to certain of Licensor's Structures, as defined herein;

WHEREAS, in accordance with Indiana law, Licensor has adopted construction requirements and waiver procedures necessary to construct, place, or use small cell facilities and associated supporting structures in certain areas of its community;

WHEREAS, Licensor wishes to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling Licensor to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, Licensor is willing to accommodate Licensee's non-exclusive use of certain Licensor Structures in accordance with all applicable law and the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth in this Agreement, the Parties hereby agree as follows:

CERTAIN DEFINED TERMS

As used herein, the following capitalized terms have the meaning ascribed to them below.

"Applicable Code" means collectively, the Municipal Code of the City of Fishers, the City of Fishers Unified Development Ordinance, Construction Requirements, and Waiver Procedure and the City's Nickel Plate Code, as amended.

"Approved Small Cell Facility(ies)" means Small Cell Facilities which have been approved for installation by the Municipality pursuant to Section 3 and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

"Construction Requirements" means the requirements adopted by the City of Fishers Board of Public Works & Safety to construct, place, or use small cell facilities and associated supporting structures.

“Emergency” means a situation in which there is an imminent threat of (a) injury to person or property, or loss of life; or (b) fines or violations issued against Licensor pursuant to the Laws.

“FCC” means the Federal Communications Commission;

“Laws” means all applicable laws and statutes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees.

“Person” or “Persons” means any person or entity;

“Permit” means the City of Fishers permit for wireless facilities and/or wireless support structures, as applicable.

“Small Cell Facility(ies)” means equipment at a fixed location that enables wireless communications between user equipment and a communications network. A Small Cell facility shall not exceed the dimensions or size set forth in I.C. 8-1-32.3-9 or other applicable law and shall be designed to be as inconspicuous as reasonably possible to passersby.

“Structure(s)” means certain pole(s) located within rights-of-way under the Licensor’s jurisdiction, supporting one or more streetlights, traffic signals, flags, banners and/or signage; street furniture; billboard(s); trash receptacle(s); bus stop(s); and any other similar structure(s) owned and identified by Licensor and capable of accommodating a Wireless Installation, except that, Structure does not include any Licensor pole used for the function of electricity distribution.

“Technical Grounds” means, in light of prevailing industry engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with Applicable Code and the Laws.

“Waiver Procedure” means the procedure adopted by the City of Fishers Board of Public Works & Safety to construct, place, or use small cell facilities and associated supporting structures within certain areas of the City properly designated strictly for underground or buried utilities under Indiana Code § 8-1-32.3-15(c).

“Wireless Installation” means an antenna system equipment, including facilities that operate on FCC-approved frequencies in the bands authorized for commercial wireless communication services by the FCC pursuant to FCC licenses issued to Licensee, and all associated equipment, affixed by Licensee to a Structure owned or controlled by Licensor pursuant to a Permit issued in accordance with Section 3.1 hereof, including Approved Small Cell Facilities.

1. SCOPE OF AGREEMENT

1.1 **Scope of Agreement.** This Agreement hereby grants to Licensee the non-exclusive right to attach Approved Small Cell Facilities to Structures. Nothing in this Agreement grants Licensee the right to make any Wireless Installation, or to install other facilities, including Approved Small Cell Facilities, that do not conform to this Agreement, Applicable Code or the

Laws. Licensor hereby grants Licensee non-exclusive easements for the use and benefit of Licensee as necessary to exercise the right to attach to certain Licensor Structures, as provided herein. Notwithstanding the foregoing or anything contained herein to the contrary, Licensee shall strictly abide by Licensor's permit process, Applicable Code and the Laws. No use of Licensor's Structures under this Agreement shall create or vest in Licensee any ownership or property rights in such Structures or any rights of use in addition to those specifically provided herein. This Agreement is specifically limited to certain Structures, as provided herein, and does not grant Licensee a right to use any other structure owned by Licensor. Notwithstanding any provision contained herein to the contrary, if there is conflict between the Laws and Licensee's permit process, Waiver Procedure, or Applicable Code, the Laws shall govern and control this Agreement.

1.2 Interference with Wireless Installations. Licensor will not grant after the date of this Agreement a permit, license or any other right to any third party if, at the time such third party applies for access to a Structure, Licensor knows or has reason to know, in its sole, reasonable discretion, that such third party's use may in any way adversely affect or interfere with the Licensee's existing Wireless Installations, Licensee's use and operation of its facilities, or Licensee's ability to comply with the terms and conditions of this Agreement.

1.3 Installation of Poles. Notwithstanding any provision herein, Licensee (a) has the right to install its own poles in non-residentially zoned municipal rights-of-way for the purpose of affixing its Wireless Installations; and (b) may seek a waiver to install its poles in residentially zoned municipal rights-of-way, subject to Applicable Code, the Laws, and the City's permitting process.

2. GENERAL OBLIGATIONS

2.1 Technical Requirements and Specifications.

(a) At its own expense, Licensee must erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with:

(i) the requirements and specifications of the National Electrical Safety Code ("NESC"), the National Electrical Code ("NEC") and any and all other applicable regulatory codes for safe practices when performing work on or near Structures (collectively, "Safety Codes"); and

(ii) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction, including the Applicable Code and the Laws.

(iii) changes to the requirements, specifications, rules and orders in subsections (i) and (ii) shall not apply retroactively unless required by law.

(b) Licensor may, on Technical Grounds, deny all or part of an application for Permit, or limit the number and/or technical characteristics (*e.g.*, weight or size) of any Wireless Installation on any Structure or require relocation, replacement or removal of Wireless Installations.

2.2 No Liens Permitted. Licensee will not, directly or indirectly, create, incur, assume or suffer to exist any lien with respect to any Structure or other Licensor property or facility resulting from any work performed by Licensee or on its behalf pursuant to this Agreement or any act or claim against it or any of its contractors, agents, or customers and will, at its sole expense, promptly take any action as may be necessary to discharge any such lien within thirty (30) days of first being notified in writing of its existence.

2.3 Worker Qualifications; Responsibility for Agents and Contractors. Licensee shall ensure that its workers and, to the extent that Licensee may employ agents or contractors, their workers, are adequately trained and skilled to access Structures in accordance with all applicable industry and governmental standards, Applicable Code, and the Laws. Licensor may deny access to its Structures to any such worker who is not so qualified, or does not act in a safe and professional manner when accessing any Structure. In such event, Licensee shall take such reasonable and necessary action so as to ensure that such worker does not continue to access Structures on Licensee's behalf unless such worker is qualified to Licensor's reasonable satisfaction. Notwithstanding the foregoing or anything contained herein to the contrary, Licensee acknowledges and agrees that Licensor shall not be responsible for monitoring or overseeing the work performed by or on behalf of Licensee related to this Agreement. In no event, shall Licensor be liable or otherwise responsible for the competence or conduct of the other Licensee's workers, agents or contractors.

2.4 Utilities. Licensee shall be solely responsible for arrangement and payment for electric service necessary to install and operate Wireless Installations.

3. APPLICATION FOR PERMIT

3.1 Application for Permit. Before placing any new or additional Wireless Installation onto any Structure, Licensee shall apply for a Permit, which Licensor may revise or amend from time to time in accordance with the Laws, and pay the standard application fee set forth below. Each application for Permit may be consolidated and used to cover multiple Structures that are located within the Licensor's jurisdiction and constitute a single small cell network. Licensor shall review an application for Permit within ten (10) business days of its receipt to determine if such application is complete. If Licensor determines that an application is not complete, the Licensor shall notify the Licensee in writing of all defects in the application for Permit. If Licensor does not notify the Licensee in writing of all defects in the application of Permit, the application is considered complete. Licensee may cure the defects set forth in the notice and resubmit the corrected application for Permit to Licensor within fifteen (15) days of receiving the notice. If Licensee is unable to cure the defects within the fifteen (15) day period, the Licensee shall notify Licensor of the additional time the Licensee requires to cure the defects. Within thirty (30) days after making an initial determination of completeness, Licensor shall review the application for Permit to determine its conformity with applicable building requirements and Applicable Code and notify the Licensee whether the application for Permit is approved or denied; provided, however, if the Licensee required additional time to cure defects in the application for Permit, the forty-five (45) day period is extended for a corresponding amount of time. Licensor shall charge its standard application fee of \$100 per Structure included in the application.

3.2 Technical Review. Pursuant to the Laws, Applicable Code, and its permitting process, Licensor will undertake all engineering and administrative activities necessary to approve or deny Licensee's Permit Application. Such activities include, but are not limited to, assigning a Permit number, logging the Permit into the tracking system, approving any Make-Ready Work associated with the Permit, informing other attachers of Licensee's intent to attach, approving or denying the Permit, field work (inspecting the location, taking required measurements at the location, setting up joint meetings with other attachers if necessary, and inspecting the work.)

4. PREPARATION OF STRUCTURES FOR ATTACHMENT

4.1 Make-Ready Costs.

(a) Licensor will provide Licensee with a written estimate ("Make-Ready Cost Estimate") of the direct costs to prepare the Structure(s) for attachment by Licensee ("Make-Ready Costs") within thirty (30) days of Licensor's receipt of a complete application for a Permit in accordance with Section 3. Licensee shall have sixty (60) days from the receipt of the Make-Ready Cost Estimate to accept the terms set forth therein, unless applicable law provides a different deadline as reflected in Exhibit B. Licensor will not begin Make-Ready Work until it has received Licensee's signed approval of the Make-Ready Cost Estimate and full payment thereof ("Approved Make-Ready Cost Estimate").

(b) In the event Licensor determines, based upon Technical Grounds, that inadequate space exists on its Structure(s) to accommodate any proposed Wireless Installation, such Structure(s) may be replaced by Licensor, at Licensee's sole expense, with Structure(s) with adequate space to accommodate the proposed Wireless Installation; provided, however, that nothing in this Agreement shall obligate Licensor to replace any Structure for the sole purpose of accommodating any Wireless Installation; the decision to make such replacement shall at all times be in the absolute, sole discretion of Licensor.

(c) If a Person, other than Licensor, would have to rearrange or adjust any of its facilities in order to accommodate a new Wireless Installation, Licensor shall use reasonable efforts (as defined herein below), at Licensee's sole expense to coordinate such activity. Licensee shall, however, be responsible for directly paying such other Person for its charges for the same. The Wireless Installation shall be conditioned on the completion of all Make-Ready Work needed to establish full compliance with NESC, Licensor practices, engineering standards, and Applicable Code; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant at the time of Licensee's Application. Notwithstanding the foregoing, if non-compliant facilities or attachments exists on Licensor's Structures, neither Licensor nor any third-party shall be required to remedy such non-compliance to allow Licensee's Wireless Installation on Licensor's Structure. If Licensee is requested by another Person, in comparable circumstances, to relocate or adjust any Wireless Installation to accommodate that Person's facilities, subject to Licensor's written approval of such relocation, the Licensee shall reasonably cooperate with such request and charge no more than Licensor would be permitted to charge for the relocation of its facilities on the

applicable Structure under section 4.1(a) above. For purposes of this Section 4.1(c), "reasonable efforts" shall mean that Licensor shall coordinate communication with such other Person, and in Licensor's sole discretion, request that the Person consider allowing such rearrangement or adjustment, and in no instance shall "reasonable efforts" require Licensor to take any additional action to require such third-party to agree to rearrangement or adjustment, such matter being an issue between Licensee and the third-party.

4.2 Completion of Make-Ready Work. Licensor will promptly complete or cause to be completed all requested make-ready work described in the Approved Make-Ready Cost Estimate ("Make-Ready Work") within sixty (60) days after receiving the Approved Make-Ready Cost Estimate and payment thereof. Notwithstanding the foregoing, Licensee understands that in certain scenarios, Licensor may have to procure certain Make-Ready Work in accordance with Indiana Code section 36-1-12 *et. seq.*, in which case the parties shall mutually agree to an extended timeline by which Licensor may complete the Make-Ready Work in accordance with Indiana law.

4.3 Make-Ready Cost Reconciliation. If the actual and reasonable costs incurred by Licensor in a Make-Ready effort exceed the pre-paid Make-Ready Cost Estimate, Licensee shall pay Licensor the shortfall amount of such costs within sixty (60) days of receipt of the invoice. If such Make-Ready Costs were less than the pre-paid Make-Ready Estimate, Licensor will refund the excess Make-Ready Payment to Licensee within sixty (60) days following completion of the make-ready work

4.4 Notification of Completion of Installation. Within twenty (20) business days of completing the installation of each Wireless Installation, Licensee shall notify Licensor of such completion.

5. OPERATION AND MAINTENANCE; RESERVATION OF RIGHTS

5.1 Reservation of Rights. As permitted by applicable law, Licensor reserves the right to operate and maintain its Structures and facilities, to discontinue such maintenance, and to remove its Structures and facilities, in the best manner required to fulfill its own service requirements, and its public, employee and worker safety obligations.

5.2. RF Emissions.

(a) Licensee will comply with all Federal Communications Commission (FCC) regulations regarding radio frequency ("RF") emissions and exposure limitations. To the extent allowed by Applicable Code and the Laws and provided such installations do not interfere with Licensor's use or third-parties' current use of the Structures, Licensee is allowed to install signage and other mitigation, such as a power cut-off switch on Structures, to allow workers and third parties to avoid excess exposure to RF emissions. Licensor's authorized field personnel will contact Licensee's designated point of contact with such advance notice as practicable to inform Licensee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an emergency, the power-down will be with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure

area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored.

(b) Licensor, Licensee and other attachers which emit RF on Licensor's Structures are under an obligation to operate its own existing or future facilities to protect against RF interference to RF signals of Licensor, Licensee, and such other attachers, as applicable, as may emanate or arise. Licensor and Licensee and all others on Licensor's Structures shall endeavor to correct any interference to other networks created by its RF emissions promptly and shall coordinate and cooperate with each other relating to the same.

5.3 FCC Antenna Registrations, Federal Aviation Administration ("FAA") Compliance. Licensee is solely responsible for ensuring compliance with any and all FCC antenna registration, FAA, or similar requirements with respect to the location of the Licensee's antennas or other facilities. Without limitation, Licensee acknowledges and agrees that Licensor's Structures are not "antenna structures" under the FCC's rules and that, accordingly, Licensor has no obligation of its own in this regard to register them with the FCC, the FAA, or other agency.

5.4 Equipment Modification and Replacements. Subsequent to the original installation of Licensee's equipment, Licensee may modify or replace the equipment in accordance with the Laws, and so long as such modification or replacement does not increase the size on the applicable Small Cell Facility beyond the size parameters set forth in Indiana Code § 8-1-32.3-9, if any, that was established in the approved application, or involve placement of equipment outside the area designated in the approved application without obtaining prior written consent of Licensor and without any application for a Permit or any charges from Licensor.

5.5 Access. Provided that such access does not impede vehicular or pedestrian traffic, at all times throughout the Term of this Agreement, and at no additional charge to Licensee, Licensee and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to, in and on any Structure used or to be used pursuant for an approved Permit so that Licensee may install, operate, maintain, repair, replace, remove, or modify its Wireless Installations. If such Access impedes vehicular or pedestrian traffic, Licensee must first schedule Access with Licensor. Licensee shall not be charged for Access unless such Access necessitates a maintenance of traffic plan, in which case Licensee shall cause, at its sole cost and expense, the maintenance of traffic plan to be executed. .

6. CHARGES, BILLING AND PAYMENT

6.1 Annual Rent For Wireless Installations. Licensee shall pay Licensor the rental fee ("Rent") per Wireless Installation as set forth in Exhibit B, for each year (or partial year) that this Agreement remains in effect. Said Rent is per Structure and includes all appurtenant equipment and facilities used in connection with Wireless Installations.

6.2 Timing of Payment and Calculation of Number of Wireless Installations.

(a) The Rent shall be payable annually in advance for each Wireless Installation for which a Permit has been issued as of October 1 of the prior calendar year (the "Record Date").

(b) If Licensee's records show a different number of Wireless Installations for which a Rent payment is required, Licensee shall so notify Licensor within thirty (30) days of relevant invoice. Licensor will then, following receipt of Licensee's notification, either accept in writing Licensee's revised count/information or notify Licensee in writing that a dispute exists about such count, in which event the parties shall comply with the dispute resolutions provisions set forth in Section 14 of this Agreement.

6.3 Intentionally Omitted.

6.4 Unauthorized Wireless Installations.

(a) Upon discovery of a Wireless Installation that has not been approved by Licensor by Permit or is not in compliance with Applicable Code or the Laws (an "Unauthorized Wireless Installation"), Licensor shall invoice, and Licensee shall pay to Licensor within thirty (30) days from receipt of the date of invoice, a sum equal to the then current Rent multiplied by two (2) (the "Unauthorized Fee") for each of the months the Unauthorized Wireless Installation has been in place.

(b) Licensor, in its sole discretion, shall determine whether Licensee shall remove the Unauthorized Wireless Installation at Licensee's sole cost and expense or allow Licensee to seek a Permit for the Unauthorized Wireless Installation.

6.5 Billing and Payment Generally.

(a) Except as otherwise provided herein, all bills and invoices and other requests for payment rendered under this Agreement shall be paid by Licensee within sixty (60) days from the receipt of invoice.

(b) Licensee shall notify Licensor within twenty (20) days of the date of invoice of any dispute, with sufficient particularity to identify the amounts in, and grounds for, dispute.

6.6 Interest.

Any payment of money owed by Licensee to Licensor pursuant to this Agreement shall accrue interest at twelve percent (12%) per annum from the date due until paid. Interest shall not accrue during any time when Licensee is complying with the dispute resolution procedures outlined in Section 14 of this Agreement. This Section 6.6 shall survive termination of this Agreement.

7. AUDITS AND INSPECTIONS

7.1 Audits.

(a) Licensee and Licensor shall cooperate in determining the total number of Wireless Installations. This determination shall be based on an on-going inventory of Permits that shall be maintained by Licensor. Licensor has the right to require a jointly conducted physical

audit of Wireless Installations no more frequently than once every two (2) years, unless Licensee is responsible for a Default (defined in section 14.1) under this Agreement, in which case Licensor may audit no more frequently than once a year (until such default is cured). Licensor must provide twenty (20) days' written notice of any audit. The actual and reasonable cost of such audits will be shared equally by Licensor and Licensee.

(b) Licensee and Licensor may mutually agree that in lieu of such a jointly conducted physical audit, the number of Wireless Installations may be determined from existing maps and attachment records, in which case, each Party shall make all relevant maps and records available to the other Party and the number of Wireless Installations shall be cooperatively determined ("Map Audit"). In lieu of a physical audit as described in section 7.1(a), the parties may perform a Map Audit on an annual basis.

7.2 Safety Inspections. Licensor may conduct, at its sole expense, inspections of Wireless Installations on Licensor's Structures and to conduct inspections in the vicinity of Wireless Installations Licensee shall pay Licensor for its actual and reasonable costs for safety inspections performed for the purpose of determining if a safety violation of which Licensor has provided written notice to Licensee has been corrected by Licensee.

8. STRUCTURE REPLACEMENT AND ABANDONMENT AND REMOVAL OF WIRELESS INSTALLATIONS

8.1 Replacement or Abandonment of Structure.

(a) If for safety, reliability or operational reasons or due to government requirements Licensor replaces a Structure to which Wireless Installations are affixed, to the extent practicable, Licensor will, provide Licensee with ninety (90) days' written notice to direct Licensee to remove the Wireless Installation located on the original Structure, and allow Licensee to transfer it to the replacement Structure, if available. If such Structure must, in the reasonable discretion of Licensor, be immediately replaced or removed, Licensor will provide Licensee as much notice as practicable, and will allow Licensee to transfer its Wireless Structure to a replacement Structure, if available.

(b) If Licensor desires to abandon any Structure, it shall give Licensee sixty (60) days' written notice, and within such time, Licensee may remove or otherwise dispose of its Wireless Installations.

(c) If a Licensor's Structure needs to be replaced in order to accommodate Wireless Installations, Licensor will replace the Structure and Licensee will reimburse Licensor for all actual and reasonable costs directly incurred by Licensor to do so.

(d) If, upon expiration of any required notice period for removal, Wireless Installation(s) has/have not been removed, Licensor may at Licensee's sole expense, remove and dispose of the Wireless Installation(s), without any liability to Licensee for such removal and disposition. Further, if Licensor removes a Wireless Installations from a Structure pursuant to this

Section 8(d), Licensee shall pay Licensor the actual costs incurred by Licensor for such removal within thirty (30) days of receipt of an invoice for such costs.

8.2 Removal of Wireless Installations by Licensee. Licensee may at any time remove Wireless Installations from Licensor's Structures, provided that it gives Licensor thirty (30) days' notice of such removal. No refund of any rental paid will be due on account of such removal except as provided for in section 13.3 or if triggered by casualty, fire or other harm affecting any Structure ("Casualty Event"). Licensor will provide notice to Licensee of any Casualty Event as soon as reasonably possible thereafter. In the event of damage by a Casualty Event to a Structure that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which Licensor elects not to repair, or if such Casualty Event is reasonably be expected to disrupt Licensee's operations on the Structure for more than forty-five (45) days, then Licensee may, at any time following such casualty or harm: (i) terminate the applicable Permit upon fifteen (15) days' written notice to Licensor; (ii) place a temporary facility, if feasible, at a location equivalent to Licensee's current use of the Structure until such time as the Structure is fully restored to accommodate Licensee's Wireless Installation with the written consent of Licensor; or (iii) permit Licensee to submit a new Application for Permit for an alternate location equivalent to Licensee's current use of the Structure, and Licensor shall waive the application fee and transfer all remaining rights to the new Structure so long as such relocation was due to a Casualty Event not caused by Licensee. Any such notice of termination shall cause the applicable Permit to expire with the same force and effect as though the date set forth in such notice was the date originally set as the expiration date of the applicable Permit. The rent shall abate during the period of repair following such Casualty Event in proportion to the degree to which Licensee's use of the Structure is impaired. Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis.

8.3 Licensee Safety or Other Violations. If Licensor discovers any regulatory, safety or other violation of this Agreement with respect to Wireless Installations, it shall notify Licensee and Licensee shall have thirty (30) days in which to remedy such violations, except that Licensor may require quicker action in Emergency situations.

9. INSURANCE

9.1 Licensee shall at its sole cost and expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Licensee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to a Licensor a Certificate of Insurance evidencing the types of insurance and policy limits required.

9.2 Required Insurance.

(a) Workers' Compensation and Employer's Liability insurance, as required by the Laws, with Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by law, the policy must include a blanket waiver of subrogation in favor of Licensor.

(b) Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

\$ 2,000,000 General Aggregate Limit
\$ 1,000,000 Each Occurrence
\$ 1,000,000 Each Occurrence - Personal Injury and Advertising Injury
\$ 2,000,000 Products/Completed Operations Aggregate Limit

The Commercial General Liability policy must include Licensor as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of Licensor.

(c) Business Automobile Liability insurance with limits of at \$1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.

(d) Umbrella/Excess Liability insurance with limits of \$1,000,000 each occurrence and in the aggregate.

9.3 Licensee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance. Licensee shall provide at least thirty (30) days advance written notice of cancellation or non-renewal of any required insurance that is not replaced. Licensee will require any subcontractors performing work under this Agreement to maintain coverage and limits at least as broad as those listed above. With respect to any required policy that is issued on a "claims-made" basis, Licensee agrees to maintain coverage for two (2) years following the term of this Agreement. Notwithstanding the foregoing, Licensee may self-insure the required insurance under the same terms and conditions as outlined above; provided, that Licensee consider Licensor as an additional insured for all purposes of self-insurance.

10. ALLOCATION OF LIABILITIES

Each Party shall be liable for all damages for such injuries to third Persons or any third Person's property proximately caused by the Party's negligence or willful misconduct or by its failure to comply at any time with the practices herein provided. As used in the immediately preceding sentence, reference to injury to property shall be deemed to refer to physical damage to physical property.

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF SUCH PARTY OR ANY OTHER PERSON, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY PROVISION OF INDEMNITY, OR OTHERWISE.

11. INDEMNIFICATION

11.1 To the extent permitted by law, Licensee shall indemnify, hold harmless and, at Licensor's sole option, defend Licensor, its principals, parents, affiliates, officers, directors, contractors, subcontractors, suppliers, licensees (other than Licensee), invitees, agents, attorneys, employees, successors and assigns (together "Licensor Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensor Indemnitees may incur, asserted by reason of the negligent installation, operation, use, repair, or removal of Wireless Installations or breach of the terms of this Agreement by Licensee, including acts or omissions by its agents, contractors, or subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensor.

11.2 To the extent permitted by law, Licensor shall indemnify, hold harmless and, at Licensee's sole option, defend Licensee, its principals, parents, affiliates, officers, directors, contractors, subcontractors, suppliers, licensees, invitees, agents, attorneys, employees, successors and assigns (together "Licensee Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensee Indemnitees may incur, asserted by reason of the negligent installation, operation, use, repair, or removal of Licensor's Structures or breach of the terms of this Agreement by Licensor, including acts or omissions by its agents, contractors, or subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensee. Notwithstanding the foregoing or anything to the contrary contained herein, Licensee hereby acknowledges and agrees that Licensor's financial exposure for certain claims is limited by the Indiana Tort Claims Act, and Licensor's obligation to indemnify and save Licensee, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fee and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Indiana Code section 34-13-3-4, as amended.

12. TERM

This Agreement shall commence as of the Effective Date, and, if not lawfully terminated sooner, remain in full force and effect for a term of ten (10) years, and will automatically renew for four (4) successive five (5) year terms, unless either Party gives the other written notice of termination at least one hundred and eighty (180) days prior to the then-current term. Upon termination of this Agreement, Licensee shall remove Wireless Installations from all Licensor's Structures within one hundred eighty (180) days. If not so removed within one hundred eight (180) days following such termination, Licensor shall have the right to remove such Wireless Installations, and to dispose of same, at Licensee's sole expense and without any liability to Licensee for such removal and disposition. Licensee shall pay the actual costs incurred for such removal within sixty (60) days of receipt of an invoice for the costs.

13. DEFAULT AND TERMINATION

13.1 Default. If either Party fails to perform or observe any material term or condition of this Agreement within thirty (30) days after receipt of written notice of such failure from the other Party, then such Party will be in default of the Agreement ("Default"). No such failure, however, will be deemed to exist if a Party has commenced to cure such Default within such period and provided that such efforts are prosecuted to completion with reasonable diligence.

13.2 Licensee's Default and Licensor's Remedies. If Licensee does not cure its Default within the allotted time period, Licensor may, at its reasonable discretion, take any one or more of the following actions:

- (a) suspend Licensee's access to any or all of Licensor's Structures;
- (b) terminate the specific Permit(s) granted to Licensee covering the Structure(s) to which such Default is applicable;
- (c) require the obligation to be fulfilled;
- (d) remove, relocate, or rearrange Wireless Installations to which such Default relates (all at Licensee's sole expense);
- (e) decline to Permit additional Wireless Installations under this Agreement until all such Defaults are cured; and/or
- (f) only in the case of a pattern or practice of Defaults, terminate this Agreement.

13.3 Licensor's Default and Licensee's Remedies.

(a) If Licensor does not cure its Default within the allotted time period, Licensee may, at its reasonable discretion, either terminate this Agreement or demand that the terms of this Agreement be complied with.

(b) If Licensor Defaults and Licensee elects to terminate the Agreement, Licensor shall refund any portion of advanced, prepaid Rent actually paid by Licensee pro-rated for any period of the Term remaining following the effective date of the termination of this Agreement. Licensor shall make such refund within sixty (60) days of the effective date of such termination.

13.4 Effective Date of Termination. Any termination under sections 13.2(b), or 13.3(a) shall be effective upon written notice from the terminating party to the other party. Such notice will identify the effective date of the termination, which effective date may be as early as the effective date of the notice under section 16.1.

13.5 Cumulative Remedies. The remedies provided by this section 13 are cumulative and in addition to any other remedies available under this Agreement or otherwise.

14. DISPUTE RESOLUTION PROCEDURES

As a condition precedent to the initiation of any litigation, the Parties shall in good faith attempt to settle any dispute arising out of or relating to this Agreement through upper management escalation and non-binding mediation. Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. The dispute shall be escalated to upper management to exchange relevant information and attempt to resolve the dispute. If the matter has not been resolved within thirty (30) business days of receipt of the disputing Party's notice, either Party may initiate mediation. Such mediation shall take place at a mutually agreeable location in Hamilton County, Indiana, with cost borne equally by the parties. In the event that such dispute is not resolved within ninety (90) calendar days following the first day of mediation, either Party may initiate litigation in Hamilton County, Indiana. In case of a failure of either Party to follow the foregoing, the other may seek specific enforcement of such obligation in the courts having jurisdiction hereunder.

15. CONFIDENTIALITY

Unless otherwise authorized by this section 16.1 or required by the Laws, neither Party shall at any time disclose, provide, demonstrate or otherwise make available any confidential information of the other Party ("Confidential Information"). "Confidential Information" shall include any information of a confidential or proprietary nature disclosed by a Party to this Agreement to the other Party. Each Party shall use its best efforts and shall cause its officers, directors, employees, lenders and agents (including retained attorneys and consultants) to whom such Confidential Information may be disclosed to safeguard the confidentiality of the other Party's Confidential Information. At a minimum, such precautions shall include, but not be limited to, all precautions taken to ensure the confidentiality of such Party's own Confidential Information. Confidential Information may be disclosed (a) with the non-disclosing Party's prior written consent, or (b) as may be required by the Laws, including Open Records laws, or governmental authorities (including but not limited to disclosures necessary to obtain permits and other regulatory approvals); provided that the Party making such disclosures shall seek, and use all reasonable efforts, to obtain confidential treatment for the same. Notwithstanding anything in this Section 15 or elsewhere in this Agreement to the contrary, Licensee shall have the right, without the necessity of obtaining Licensor's consent, to provide copies of this Agreement and the locations of Structures to third parties as may be necessary to obtain required authorizations, or where otherwise compelled by the Laws.

16. MISCELLANEOUS PROVISIONS

16.1 Notices. Except as provided below, all written notices shall be effective upon actual delivery or completed facsimile addressed to the other party as follows:

To Licensor:

Scott Fadness, Mayor
One Municipal Drive
Fishers, IN 46038

in each of the above cases, with a copy sent to:

Chris Greisl, City Attorney
One Municipal Drive
Fishers, IN 46038

To Licensee (including bills):

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
575 Morosgo Drive NE
Atlanta, GA 30324
Re: Wireless Installation on Public Structures (Fishers, Indiana)
Fixed Asset # _____

With a Copy to:

Matthew M. Price, Esq.
Bingham Greenebaum Doll LLP
10 West Market Street, Ste. 2700
Indianapolis, IN 46204

Contact Number for day to day operations:

Licensor: _____
Licensee: 1-800-638-2822

or to such other address as either the Municipality or AT&T Mobility may designate as its new address for such purpose by notice given to the other party in accordance with the provisions of this Section at least ten (10) Days prior to the effective date of such change. Any notice under this Section shall be deemed to have been given (a) two (2) Days after the date when it is mailed, if sent by first- class or certified mail, return receipt requested, postage prepaid, (b) one (1) Day after the date it is made, if sent by commercial overnight courier, or (c) upon the date personal delivery is made.

Emergency Notice: In the event of an emergency, including the need for a temporary power shut-down or temporary disabling of a Small Cell Facility, the Municipality's personnel shall use their best efforts to contact AT&T Mobility at 1(800) 638-2822, with an email to _____.

16.2 Force Majeure. Deadlines for completing work and providing notice under this Agreement shall be suspended for a reasonable period upon the occurrence of a force majeure event.

16.3 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Except as otherwise provided in this Agreement, neither Party shall assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the written consent of the other Party, which consent shall not be unreasonably withheld. Either Party may assign its rights and obligations to an affiliate without consent upon 30 days' written notice. Affiliate for purposes of this provision is any entity that controls, is controlled by, or is under common control with Licensee or another board or commission of Licensor.

16.4 Applicable Law. This Agreement shall be interpreted, construed, and enforced, in accordance with the laws of the State of Indiana, without regard to its conflict of laws principles, and, where applicable, federal law. Nothing contained herein shall be construed as a waiver, by either party, of its respective rights under the Laws.

16.5 Change of Law. In the event that any legislative, regulatory, judicial, or other action ("new law") affects the rights or obligations of the Parties, or establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Wireless Installation on public infrastructure or in the right-of-way, that differ, in any material respect from the terms of this agreement, then either Party may, upon thirty (30) days' written notice, request renegotiation of the terms of this Agreement to conform to the new law. If the Parties are unable to agree upon such new terms within ninety (90) days after such notice, then this Agreement shall terminate, without liability to either party.

16.6 Exhibits. In the event of any inconsistency between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such incorporated Exhibits unless such Exhibit specifies otherwise.

16.7 Execution in Counterparts. This Agreement may be executed in several counterparts, including by counterpart facsimiles or emails, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

16.8 Waiver. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision.

16.9 Severability. If any portion of this Agreement is found to be unenforceable, the remaining portions shall remain in effect and the Parties shall begin negotiations for a replacement of the invalid or unenforceable portion.

16.10 Survival. The terms and provisions of this Agreement that by their nature require performance by either Party after the termination or expiration of this Agreement, shall be and remain enforceable notwithstanding such termination or expiration of this Agreement for any reason whatsoever.

16.11 Waiver of Jury Trial. Each Party waives its right to a trial by jury on disputes arising from this Agreement.

16.12 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensor with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those contained herein. This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.

[SIGNATURES INCLUDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

CITY OF FISHERS

BY:  _____

NAME: Scott Fadress

TITLE: Mayor

DATE: May 13, 2019

**NEW CINGULAR WIRELESS PCS, LLC, a
Delaware Limited Liability Company**

BY: **AT&T Mobility Corporation, Its Manager**

BY:  _____

NAME: Tracy Zavelson

TITLE: Director, AT&T

DATE: 6-4-19

EXHIBIT A
APPLICATION FOR PERMIT

EXHIBIT B

FEES, BOND AND STATE-SPECIFIC TERMS – INDIANA

Permit Application and Pole Attachment Rental Fee (Sections 3.1, 6.1)

Licensor shall pay an Application Fee of \$100 per Wireless Installation included in the application at the time of submission.

Licensee shall pay Rent of \$50 per Wireless Installation for each year (or partial year) that this Agreement remains in effect.

State-Specific Terms (Sections 3.1, 4.1(a))

Each Application for Permit may Structures

Shot Clock

Pursuant to Indiana Code § 8-1-32.3-22(d), Licensor will notify Licensee of the specific deficiencies in any incomplete Permit application within 10 days of its submission.

Pursuant to Indiana Code § 8-1-32.3-22(f), Licensor will approve or reject each Permit within 45 days of its submission of a complete application.