

CITY OF BALTIMORE
COUNCIL BILL 19-0407
(First Reader)

Introduced by: The Council President
At the request of: The Administration (Department of Transportation)
Introduced and read first time: July 22, 2019
Assigned to: Housing and Urban Affairs Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Planning, Department of Housing and Community Development, Department of Transportation, Department of Finance, Board of Estimates, Baltimore City Information and Technology Department, Fire Department, Department of Recreation and Parks, Environmental Control Board, Department of Public Works, Department of Real Estate

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Franchise – New Cingular Wireless PCS**

3 FOR the purpose of granting a franchise to New Cingular Wireless PCS, LLC, to construct,
4 install, maintain, repair, operate, relocate, replace, and remove certain Communications
5 Facilities in and across certain streets and Public Ways and Park Properties, subject to certain
6 terms and conditions; and providing for a special effective date.

7 BY authority of
8 Article VIII – Franchises
9 Baltimore City Charter
10 (1996 Edition)

11 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE**, That a
12 franchise or right is granted to New Cingular Wireless PCS, LLC (the “Grantee”), to construct,
13 install, maintain, repair, operate, relocate, replace and remove certain facilities relating to the
14 provision of Wireless Services in and across certain streets and Public Ways and Park Properties,
15 subject to the terms and conditions of this Ordinance and the Franchise Agreement between the
16 Mayor and City Council of Baltimore and the Grantee, which is attached and made a part of this
17 Ordinance.

18 **SECTION 2. AND BE IT FURTHER ORDAINED**, That for the franchise or right granted by this
19 Ordinance (the “Franchise”) to become effective, the Grantee must notify the Board of Estimates,
20 within 30 days of the effective date of this Ordinance, that the Grantee accepts the Franchise.
21 The Grantee’s failure to so notify the Board of Estimates constitutes a refusal to accept the
22 Franchise, and, in that event, this Ordinance and the Franchise granted by it will be abrogated and
23 of no further effect.

24 **SECTION 3. AND BE IT FURTHER ORDAINED**, That also for the Franchise to become effective,
25 the Franchise must be executed and enjoyed by the Grantee within 6 months after the effective
26 date of this Ordinance.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
2 expressly reserves the right at all times to exercise, in the interest of the public, full municipal
3 superintendence, regulation, and control over and in respect to all matters connected with the
4 franchise and not inconsistent with the terms of this Ordinance.

5 **SECTION 5. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect when it is
6 enacted.

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BALTIMORE CITY SMALL CELL FRANCHISE AGREEMENT

This Franchise Agreement, (the “Agreement”) is made this ___ day of _____, 2019, by and between the MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation of the State of Maryland (“City”) and New Cingular Wireless PCS, LLC (“Franchisee”).

RECITALS

1. The City, pursuant to Article VIII of the City Charter, is authorized to grant and renew non-exclusive franchises for the installation, operation, and maintenance of communications infrastructure on, beneath, above, and within the Public Ways and Park Properties of the City.
2. Franchisee desires to obtain from City as permitted by law, and City as a municipal corporation desires to grant to Franchisee, a franchise for the right to construct, install, maintain, repair, operate, relocate, replace and remove Communications Facilities relating to the provision of Wireless Services in the Public Way and on Park Properties within the City, in a manner consistent with this Agreement.

NOW, THEREFORE, AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1.0 Definitions

1.1 “Agreement” or “Franchise Agreement” means this Agreement, together with Appendices and Exhibits attached to this Agreement, if any, and any amendments or modifications.

1.2 “Applicable Law” or “Law” means all federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules and regulations, including but not limited to all Federal Communications Commission (“FCC”) resolutions, orders, rules, and regulations, this Agreement, the Baltimore City Charter, the aesthetic or design standards applicable to Communications Facilities established by the City, and the administrative and judicial decisions interpreting these sources of law.

1.3 “Authorizations” means the permissions Franchisee must have to deploy Communications Facilities and/or provide Wireless Services, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use private rights of way and/or easements or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

1.4 “City” means the Mayor and City Council of Baltimore, Maryland, or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission or department of, or any other entity of or acting on behalf of, the Baltimore city government or any officer, official, employees, or agent of the Baltimore City government, any designee of the foregoing, or any successor thereto.

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- 1 **1.5** “Conduit” means enclosed underground raceways capable of protecting fiber optic
2 and other communications cables, including associated individual ducts, inner ducts,
3 manholes, hand holes, vaults, pull-boxes, and trenches.
- 4 **1.6** “Effective Date” means the date upon which this Agreement is adopted and approved
5 by the Mayor and City Council of the City.
- 6 **1.7** “Communications Facilities” means any and all equipment and assets located on
7 Public Ways and Park Properties owned by or under the control of Franchisee that are
8 reasonably necessary and appropriate for the offering and provision of Wireless
9 Services, including, but not limited to: optical repeaters, converters, power amplifiers,
10 radios, multiplexers, remote radioheads, antennas, aboveground and underground
11 fiber optic and coaxial cable, conduit, wires, meters, pedestals, power switches,
12 electrical generation and transmission facilities, cabinets, enclosures, control boxes,
13 and accompanying support structures, whether referred to singly or collectively. The
14 term does not include facilities attached to what are commonly known as macro
15 towers.
- 16 **1.8** “Franchise” means the non-exclusive right granted, by ordinance and subject to this
17 Agreement, to Franchisee to construct, operate, repair, and maintain the
18 Communication Facilities on, over, under, upon, across, and along the Public Ways
19 and Park Properties.
- 20 **1.9** “Franchise Area” shall mean all the area within the boundaries of the City.
- 21 **1.10** “Park Properties” means the real properties controlled by the Department of
22 Recreation and Parks pursuant to the provisions of Article VII of the City Charter,
23 which include parks, zoos, squares, athletic and recreational facilities.
- 24 **1.11** “Person” means any natural person or any association, firm, partnership, joint venture,
25 corporation or other legally recognized entity, whether for-profit or not-for-profit.
- 26 **1.12** “Public Way” means the surface of, and the space above and below, any public street,
27 highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane,
28 public way, drive, circle or other public right-of-way, including, but not limited to,
29 public utility easements, dedicated utility strips, or rights-of-way utilized for
30 compatible uses. Public Way shall not include any City buildings, structures or other
31 improvements, regardless of whether they are situated in a public right-of-way.
- 32 **1.13** “Wireless Service(s)” or “Service(s)” means any services using licensed or
33 unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or
34 mobile, provided to the public.

35 **2.0 Grant of Franchise**

36 The City grants to Franchisee the nonexclusive right to construct, install, maintain, repair,
37 operate, replace and remove Communications Facilities within the Public Way and on Park
38 Properties for the purpose of providing Wireless Services, which shall be exercised at
39 Franchisee’s sole cost and expense, and which shall be subject to all deeds, easements,
40 dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record

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1 which may affect the Public Way and Park Properties. Nothing in this Agreement shall be
2 deemed to grant, convey, create or vest in Franchisee a real property interest in land,
3 including any fee, leasehold interest, or easement.

4 **2.1 Compliance With Law**

5 The Franchise granted under the terms and conditions of this Agreement shall be
6 consistent with Applicable Laws.

7 **2.2 No Waiver of Other Permits and Authorizations**

8 Nothing in this Agreement shall be construed as a waiver of any Applicable Laws
9 (including without limitation) laws, regulations or rules of the City or of the City’s
10 right to require the Franchisee to secure the appropriate permits or authorizations,
11 provided that the fees and charges imposed upon the Franchisee for any such permit
12 or authorization shall be the standard fees or charges generally applicable to all
13 Persons for such permits or authorizations, and any such standard fee or charge shall
14 not be an offset against the compensation or other payment the Franchisee or other
15 person is required to pay the City or any other entity pursuant to this Agreement.

16 **2.3 No Interference**

17 Franchisee, in the performance and exercise of its rights and obligations under this
18 Agreement, shall not interfere in any manner with the existence and operation of any
19 and all public and private rights of way, sanitary sewers, water mains, storm drains,
20 gas mains, poles, aerial and underground electrical and telephone wires, cable
21 television, and other telecommunications, utility, or municipal property, without the
22 express written approval of the owner or owners of the affected property or properties,
23 except as permitted by applicable laws and this Agreement. The City agrees to
24 require the inclusion of the same or a similar prohibition on interference as that stated
25 above in all agreements and franchises the City may enter into after the Effective Date
26 with other similarly situated communications or information providers and carriers.

27 **2.4 Closing of Public Ways and Park Properties**

28 Nothing in this Agreement shall be construed as a waiver or release of the rights of
29 the City in and to the Public Ways and Park Properties. In the event that all or part of
30 the Public Ways or Park Properties within the Franchise Area are (1) closed to
31 pedestrian and/or vehicular traffic and/or utilities and services comparable to
32 Services; or (2) vacated or if ownership of the land under the affected Public Ways or
33 on Park Properties is otherwise transferred to another Person, all rights and privileges
34 granted pursuant to this Agreement with respect to such Public Ways or Park
35 Properties, or any part of such Public Ways or Park Properties so closed, vacated, or
36 transferred, shall cease upon the effective date of such closing, vacation, or transfer,
37 and Franchisee shall remove its Communications Facilities from such Public Ways or
38 Park Properties. If such closing, vacation, or transfer of any Public Way or Park
39 Properties is undertaken for the benefit of any private Person, the City shall, as
40 appropriate, condition its consent to such closing, vacation, or transfer of such Public
41 Way or Park Properties on the agreement of such private Person to: (i) grant the
42 Franchisee the right to continue to occupy and use such Public Way or Park

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1 Properties; or (ii) reimburse the Franchisee for its reasonable costs to relocate the
2 affected part of the Communications Facilities. The City shall provide reasonable
3 notice to Franchisee of any such closing, vacation, or transfer to allow Franchisee to
4 remove its Communications Facilities where the right to continue to occupy and use
5 such Public Way or Park Properties is not reserved for Franchisee.

6 2.5 Conditions Precedent

7 The Franchise shall commence upon the Effective Date, provided that the Franchisee
8 shall have met each of the conditions precedent set forth below and otherwise in this
9 Agreement (unless the City agrees to waive any of the conditions precedent), at which
10 time it shall become effective:

- 11 1. Board and Council Action. All necessary approvals of this Agreement by the
12 City shall have been obtained.
- 13 2. Insurance. The Franchisee shall have secured its insurance policies as set
14 forth in Section 22 of this Agreement and delivered the certificate of insurance
15 to the City Solicitor, together with evidence that the premium for each of such
16 policies has been paid, that the policies will be in effect on or before the
17 Effective Date, and that the policies are in accordance with this Agreement.
- 18 3. Clean Hands Certification. The Franchisee shall have paid all amounts due
19 and owing to the City, including, but not limited to, taxes, fees, fines, penalties
20 and interest.

21 3.0 Relation to Attachment Rights

22 This Franchise does not confer upon Franchisee any right to place or attach Communications
23 Facilities directly upon or to structures located in the Public Way or on Park Properties that
24 are owned by the City or by a third party, including but not limited to City-owned streetlights
25 and third party electric utility poles. Franchisee shall secure and maintain any license, lease
26 or other right as may be necessary for such desired attachment by way of a separate
27 attachment agreement or other similar instrument executed with such entity; provided,
28 however, that the City acknowledges and agrees that Franchisee shall not be required to
29 obtain any additional franchise rights from the City in connection with the attachment of
30 Communications Facilities to the City's or third parties' structures in the Public Way and on
31 Park Properties, provided, further, however, that the foregoing is not intended to waive any
32 applicable requirements that Licensee obtain any customary City permits.

33 4.0 Term

34 This Franchise shall be for a period of ten (10) years from the date this Franchise is approved
35 and adopted by ordinance of the Mayor and City of Baltimore City.

36 This Franchise may be automatically renewed for three (3) additional five (5) year terms
37 provided Franchisee is not in default, is not in arrears with regard to, any amount of Franchise
38 fees, and provided the City has not given notification of its desire to terminate the Franchise
39 at least one hundred twenty (120) days prior to the expiration of the then- current term, and
40 further provided that Franchisee has not given City notice of Franchisee's intention not to

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1 renew, such notice to be given not less than one hundred twenty (120) days prior to the
2 expiration of the current Franchise term.

3 **5.0 Franchise Fee**

4 For the right to construct, install, maintain, repair, operate, replace and remove
5 Communications Facilities in the Public Way and Park Properties, Franchisee shall pay to the
6 City a Franchise Fee (“Franchise Fee(s)”) in the amount of \$ _____ per year.
7 Payment shall be made no later than thirty (30) days following the conclusion of each fiscal
8 year.

9 **6.0 Use of Communications Facilities**

10 The authority granted by this Franchise extends to the use of Communications Facilities for
11 purposes of offering Wireless Services. Any non-incidentual use of such Communications
12 Facilities for a purpose other than a Wireless Service, as described in this Agreement, or the
13 installation of facilities unrelated to a Wireless Service, may require additional Authorization
14 from the City.

15 **7.0 Installation Specifications**

16 **7.1 Conduit**

17 For the deployment of new fiber optic cable in the Public Way and on Park Properties
18 to support the Communications Facilities, Franchisee shall use existing City-owned
19 Conduit. In the event there is no available City-owned Conduit to meet Franchisee’s
20 requirements, Franchisee may in coordination with the City cause the construction of
21 additional Conduit in the Public Way or on Park Properties. If the Franchisee elects
22 not to use or cause the construction of City-owned Conduit, the Franchisee agrees to
23 pay an additional fee, as may be required for licenses, leases, or other agreements
24 permitting the attachment of Communications Facilities to City-owned streetlights
25 and other structures. Any construction performed pursuant to this Section shall be
26 consistent with City specification and include at least two additional spare ducts for
27 future City use for fiber installation. Franchisee agrees that title in such property shall
28 transfer to the City upon its substantial completion. Notwithstanding the foregoing, in
29 the event that the Franchisee elects to use a Third Party for the installation of fiber
30 and conduit, the City acknowledges and agrees that if the Third Party possesses a
31 valid franchise agreement with the City, the Third Party’s franchise agreement with
32 the City takes precedence over the above requirements for causing construction of
33 new conduit in the Public Way or on Park Properties.

34 **7.2 Installation Plan**

35 The installation of Communications Facilities in the Public Way and on Park
36 Properties shall be made in accordance with plans and specifications approved by the
37 City, and after obtaining all necessary permits for all work in the Public Way and on
38 Park Properties. Franchisee shall submit to the Baltimore City Department of
39 Transportation and, when siting on Park Properties, to the Department of Recreation
40 and Parks, an initial installation plan, and any subsequent work plans concerning
41 installations not addressed in the initial work plan, which shall include fully

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1 dimensioned site plans and specifications that are drawn to scale and show (1) the
2 specific Communications Facilities; (2) the specific proposed location of such
3 Communications Facilities (including specific identification of each attachment to a
4 City-owned or third-party structure located in the Public Way and on Park Properties);
5 (3) the route of fiber optic cable utilized by the Communications Facilities only if
6 such fiber optic cable will be installed and owned by the Franchisee (as distinct from
7 being installed and owned by one of the fiber optic service providers that has its own
8 franchise with the City, regardless of whether such service provider is an affiliate
9 Franchisee; (4) the proposed type of construction materials for all structures, and any
10 other details that the City may reasonably request which are also applicable to other
11 regulated utilities operating within the Public Way and Park Properties . Such
12 installation plans may be submitted as part of Franchisee’s annual construction report
13 described in Section 14.

14 7.3 Approval by City

15 Franchisee shall not attach, install, maintain, or operate any Communications
16 Facilities in or on the Public Way or Park Properties until plans for such work have
17 been approved by the City (which shall not be unreasonably withheld, delayed,
18 conditioned or denied), and all necessary permits have been properly issued.
19 Substantial modification to an installation plan (including, for example, a change of
20 Communications Facilities site) made in the course of construction shall require the
21 written consent of the City, upon which the City shall act promptly, and may require
22 modification of an existing or issuance of a new permit.

23 Approval of plans and specifications and the issuance of any permits by the City shall
24 not release Franchisee from the responsibility for, or the correction of, any errors,
25 omissions or other mistakes that may be contained in the plans, specifications and/or
26 permits. Franchisee shall be responsible for notifying the City and all other relevant
27 parties immediately upon discovery of such omissions and/or errors and shall be
28 responsible for obtaining any amendments for corrected City-approved permits, as
29 may be necessary.

30 The City shall use its best efforts to promptly respond to a request for plan approval
31 or modification within sixty (60) days, and will cooperate with Franchisee to facilitate
32 the prompt processing and issuance of any required permits.

33 Franchisee is encouraged to submit installation plans and requests for approval as part
34 of Franchisee’s annual report described in Section 14.

35 8.0 Construction

36 8.1 Compliance with Standards and Specifications

37 All construction and maintenance shall be done in a workmanlike manner, and the
38 Franchisee shall meet or exceed all construction and service requirements required by
39 Applicable Law (including, without limitation, this Agreement and the Baltimore City
40 Code). All work involved in the construction, installation, operation, repair, and
41 maintenance of the Communications Facilities shall be performed in a safe, thorough,
42 and reliable manner using materials of good and durable quality. The Franchisee shall

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1 comply with applicable codes and industry standards, including the specifications set
2 forth in the most recently published edition of the “City of Baltimore Department of
3 Public Works Specifications for Materials, Highways, Bridges, Utilities, and
4 Incidental Structures (2006),” as amended from time to time (“Green Book”);
5 administrative orders of the City Department of Transportation, as amended from
6 time to time; the National Electrical Code, as adopted by the City from time to time;
7 the National Electrical Safety Code, as adopted by the City from time to time; and all
8 rules, standards, practices, and procedures of the FCC, as amended from time to time;
9 and the requirements of other utilities whose poles and conduits the Franchisee may
10 use, as amended from time to time.

11 **8.2 Safety Precautions**

12 **8.2.1 Standard of Care**

13 The Franchisee shall employ ordinary care at all times and employ commonly
14 accepted methods and devices for the prevention of failures and accidents that
15 are likely to cause damage, injury, or nuisance to the public. In addition, the
16 Franchisee shall, at its sole cost and expense, undertake all necessary and
17 appropriate efforts to prevent accidents at its work sites. The Franchisee shall
18 comply with the Occupational Safety and Health Act of 1970, (29 U.S.C. §§
19 651-78), as amended, and all other Applicable Law.

20 **8.2.2 Protection of Construction Areas**

21 The Franchisee shall comply with the safety requirements of all permits,
22 licenses, and other forms of approval or authorization. In addition, Franchisee
23 shall maintain reasonable barriers, lights, signs, cones, and other similar
24 warnings and protective devices required for the safety of the public in
25 compliance with this Agreement and Applicable Law. If the Franchisee places
26 any such device in any Public Way or on Park Properties, the device shall be
27 placed and maintained in a way that does not interfere with the usual travel or
28 other existing and anticipated uses of the Public Way or Park Properties.

29 **8.2.3. Emergency Notification**

30 The Franchisee shall provide the City with a twenty-four (24) hour emergency
31 telephone number at which a representative of the Franchisee, not voice mail
32 or a recording, can be contacted in the event of an emergency. The Franchisee
33 shall respond within twenty-four (24) hours to address the reported
34 emergency.

35 **8.3 Identification**

36 The Franchisee shall ensure that all employees including employees of subcontractors,
37 who will be in contact with the public, will have proper identification, which shall
38 include a telephone number that can be used for verification. In addition, the
39 Franchisee shall clearly identify all personnel, vehicles, and other major equipment
40 operating under its authority.

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1 **8.4 Antennas and Towers**

2 Antenna supporting structures and towers shall be designed for the proper loading as
3 specified in Electronic Industries Alliance R.S. 222-C Specifications. In addition,
4 antenna supporting structures and towers shall be designed in accordance with the
5 International Building Code, as amended and shall be painted, lighted, erected, and
6 maintained in accordance with all applicable rules and regulations of the Federal
7 Aviation Administration and all other Applicable Law.

8 **8.5 Disruption, Interference and Damage**

9 Franchisee shall use commercially reasonable efforts to coordinate construction,
10 installation, and maintenance of the Communications Facilities to minimize
11 unnecessary disruption, including, as appropriate, coordination with applicable City
12 agencies. Franchisee shall not interfere with the use or development of any property
13 of the City or any other person, and promptly upon completion of construction,
14 erection or installation of Communications Facilities, Franchisee shall, at its own cost
15 and expense, promptly repair any damage to property resulting from such activity to
16 its original condition.

17 **8.6 Materials and Claims**

18 All materials furnished for any work done in the Franchise Area by Franchisee shall
19 be at Franchisee's sole cost and expense. Franchisee agrees to protect the Franchise
20 Area, and City, from all claims of contractors, laborers and material men, except in
21 the case of claims which solely arise from the willful or grossly negligent acts of the
22 City. Franchisee shall promptly pay all contractors and material men. Should any
23 such lien be made or filed, Franchisee shall cause the same to be discharged and
24 released of record by bond or otherwise within thirty (30) days after written request by
25 City.

26 **8.7 One Call Notification System**

27 For the Term of this Agreement, Franchisee shall become a full-time, private sector
28 member of: (A) the Baltimore City Department of Transportation Utility Coordinating
29 Committee; and (B) the one call notification center (otherwise known as "Miss
30 Utility") and shall comply with all of the marking and location verification
31 requirements of the one call notification system.

32 **8.8 No Advertisement**

33 Franchisee shall not place any advertisement or other notice on or about the
34 Communications Facilities which identifies the Franchisee in any way (except for
35 emergency notification postings).

36 **8.9 Inspection by City**

37 The City shall have commercially reasonable access to inspect any work conducted by
38 Franchisee during the construction of Communications Facilities.

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1 **9.0 Maintenance and Repair**

2 **9.1 Generally**

3 Franchisee shall, at its sole cost and expense, perform all maintenance and repairs
4 reasonably needed to maintain Communications Facilities in good condition and neat
5 and orderly appearance, and in compliance with all applicable Laws. Franchisee shall
6 keep the Communications Facilities free of debris and anything of a dangerous,
7 noxious or offensive nature or which would create a hazard or undue vibration, heat,
8 noise or interference. If the City gives Franchisee written notice of a failure by
9 Franchisee to maintain the Communications Facilities, Franchisee shall use its best
10 efforts to remedy such failure within forty-eight (48) hours after receipt of such
11 written notice or if such maintenance or repair requires more than forty-eight (48)
12 hours to remedy, Franchisee shall commence remedial operations within said forty-
13 eight (48) hour period.

14 **9.2 Access to Communications Facilities**

15 Franchisee shall be given access to each of the Communications Facilities in the
16 Public Way and on Park Properties for the purpose of routine maintenance, repair, or
17 removal of Communications Facilities . If any such maintenance activities have the
18 potential to result in an interruption of any City services at the Communications
19 Facilities, Franchisee shall provide the City with a minimum of three (3) days prior
20 written notice of such maintenance activities. Such maintenance activities shall, to
21 the extent feasible, be done with minimal impairment, interruption, or interference to
22 City services, which notice for such maintenance activities sent to the offices or
23 persons identified in the permits issued to the Franchisee. In the event of an
24 emergency (e.g., the potential for bodily harm or property damage or material
25 disruption to the operation of the Wireless Services), such 3-day notice requirement
26 shall be waived and Franchisee shall provide the City as much prior notice as
27 reasonably possible under the circumstances. Such maintenance activities shall, to the
28 extent reasonably feasible, be done with minimal impairment, interruption, or
29 interference to City services.

30 **9.3 Repair of Public Way and Park Properties**

31 Franchisee shall be responsible for any damage, ordinary wear and tear excepted, to
32 street pavement, existing facilities, and utilities, curbs, gutters, sidewalks,
33 landscaping, and all other public or private facilities, to the extent caused by
34 Franchisee's construction, installation, maintenance, access, use, repair, replacement,
35 relocation, or removal of Communications Facilities in the Public Way or on Park
36 Properties. Franchisee shall promptly repair such damage and return the Public Way
37 and Park Properties and any affected adjacent property to a safe and satisfactory
38 condition to the City in accordance with the City's applicable street restoration
39 standards or to the property owner if not the City. Franchisee's obligations under this
40 Section 9.3 shall survive for one (1) year past the completion of such reparation and
41 restoration work.

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1 **9.4 Appearance**

2 Franchisee shall obtain design and location approval from the Planning Department
3 for all attachments that are subject to this Agreement, which approvals shall be
4 granted or denied in a non-discriminatory basis. Franchisee shall follow all legally
5 binding City policies and state and local ordinances with respect to aesthetics and
6 appearance for the duration of the Franchise.

7 **9.5 Graffiti**

8 Franchisee shall at all times keep and maintain the Communications Facilities free of
9 all graffiti located thereon. City shall notify Franchisee in writing if graffiti is located
10 on Communications Facilities. Thirty (30) days after notice in writing is received by
11 Franchisee, City shall have the right to abate any graffiti present on Communications
12 Facilities, and Franchisee shall reimburse City all costs directly attributable to graffiti
13 abatement of Communications Facilities -which are incurred by City within thirty (30)
14 days of City's presenting Franchisee with a statement of such costs.

15 **9.6 Performance Bond**

16 City may at any time during the Term require Franchisee to provide a bond in an
17 amount determined by the City to represent the estimated cost of Franchisee's
18 obligations under this Section, which the City may require Franchisee to increase
19 from time to time to reflect the reasonable estimated cost of performing such
20 obligations, to secure performance of Franchisee's obligations under this Section.

21 **10.0 Electricity Use**

22 Franchisee shall be responsible for obtaining and paying for any and all electrical utility
23 service that Franchisee requires for the use or maintenance of Communications Facilities.
24 City will reasonably cooperate with Franchisee in an effort by Franchisee to obtain
25 electrical service from a location serving a City facility.

26 **11.0 New Poles; Pole Replacement**

27 **11.1 New Poles**

28 Franchisee shall not erect poles, conduits, or other Communications Facilities in a
29 Public Way and on Park Properties without all necessary permits and authorizations
30 and the express permission of the City, which may include the execution of a separate
31 agreement between the City and Franchisee when new poles are sought to be installed
32 in the Public Way or on Park Properties. Franchisee acknowledges that the
33 installation of new stand-alone or streetlight poles in the Public Way or on Park
34 Properties is not the City's preference and that such applications for installations on
35 Public Ways or Park Properties may be denied. In the event the application for the
36 installation and construction of one or more new poles is approved, the installation
37 and construction of the new pole shall be at Franchisee's sole expense and shall
38 comply with all applicable building permits, applicable City, state and federal
39 specifications and laws ("New Poles") and become the property of the City. Any
40 New Poles constructed by Franchisee shall comport with the character of existing

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1 poles in the area and otherwise comply with the City established aesthetic or design
2 standards applicable to Communications Facilities. City shall consider any request to
3 construct a New Pole in a nondiscriminatory manner and in compliance with
4 Applicable Laws.

5 **11.2 City Use of New Poles**

6 The City may use any New Poles for City purposes, including but not limited to
7 streetlights, other types of lighting and cameras so long as such use does not interfere
8 with Franchisee’s use of its Communications Facilities. Franchisee shall not be
9 responsible for maintenance, repair or replacement of City-owned cameras, lights,
10 light bulbs and equipment or equipment owned by third parties authorized by the City
11 on the New Poles. Franchisee shall deed any new pole to the City.

12 **12.0 Removal and Modification of Communications Facilities During Term**

13 **12.1 Franchisee Right to Remove**

14 During the Term, Franchisee shall have the right to remove from the Public Way and
15 Park Properties all or any portion of Communications Facilities from time to time,
16 whether before or after a default under this Franchise Agreement, in Franchisee’s sole
17 discretion with prior notice to City. Franchisee, at its own cost and expense, shall
18 promptly dispose of any materials used and/or generated by any and all removal
19 activities, and shall promptly repair any damage to the Public Way and Park
20 Properties caused by Franchisee’s removal activities so that the Public Way and Park
21 Properties return to their condition prior to construction and installation of such
22 Communications Facilities by Franchisee, reasonable wear and tear excepted.

23 **12.2 Removal Due to Public Project**

24 Upon receipt of a written demand from the City pursuant to this Section 12.2,
25 Franchisee, at its sole cost and expense shall remove and relocate any part of the
26 Communications Facilities constructed, installed, used and/or maintained by
27 Franchisee whenever the City reasonably determines that the removal is needed for
28 any of the following purposes: (a) if required for the construction, completion, repair,
29 relocation, or maintenance of a City or other governmental agency project including
30 but not limited to, any change of grade, alignment or width of any street, sidewalk or
31 other public facility; installation of curbs, gutters or landscaping; and construction,
32 maintenance or operation of any underground or aboveground facilities such as
33 sewers, water mains, drains, storm drains, pipes, gas mains, poles, power lines,
34 telephone lines, cable television lines, and tracks; (b) because the Communications
35 Facilities are reasonably considered to be interfering with or adversely affecting
36 proper operation of City-owned light poles, traffic signals, or other City facilities; or
37 (c) to protect or preserve the public health or safety. The City shall cooperate with
38 Franchisee in relocating any portion of the Communication Facilities removed
39 pursuant to this Section 12.2 in a manner that allows Franchisee to continue providing
40 Services to its customers, including, but not limited to, expediting approval of any
41 necessary permits required for the relocation of Communications Facilities
42 corresponding to that portion relocated under this Section. No permitting or other
43 fees may be charged by the City for a removal occurring under this Section.

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12.3 Removal Due to Termination or Abandonment

Following the termination of the Franchise for any reason, or in the event Franchisee ceases to operate and abandons the Communications Facilities, Franchisee shall, within one hundred twenty (120) days, at its sole cost and expense, remove all Communications Facilities from the Public Way and Park Properties and restore the area affected by Communications Facilities to its condition at the commencement of this Franchise, reasonable wear and tear excepted, and further excepting landscaping and related irrigation equipment, or other aesthetic improvements made by Franchisee to the Facility or the adjacent property, or as otherwise required by the City. Prior to termination, Franchisee will post a payment bond in an amount up to \$500,000.00 to address the City’s cost of removing any Communications Facilities not removed by Franchisee within one hundred twenty (120) days of termination, and as compensation for any damage to the Public Way and Park Properties relating to the Communications Facilities, reasonable wear and tear excepted. Alternatively, the City may allow Franchisee, in the City’s sole and absolute discretion, to abandon the Communications Facilities, or any part thereof, in place and convey it to the City.

13.0 Compliance with Laws

13.1 Generally

This Agreement is subject to the terms and conditions of all Applicable Law.

13.2 Permits and Other Authorizations

Franchisee shall apply for, at its sole cost and expense, and obtain all applicable federal, state, county, and City permits and/or Authorizations required under Applicable Law in order to construct, operate, or otherwise implement and use Communications Facilities in the Public Way and on Park Properties, including, but not limited to, a conduit permit and charge, a right of way construction permit, building permits, encroachment permits, and any variance, conditional use permit, ministerial permit, or special exception required under the Baltimore City Zoning Code. Franchisee shall pay, as they become due and payable, all fees, charges, taxes and expenses, including conduit charges, associated with such permits and/or other Authorizations. If Franchisee is unable to obtain any necessary permits or Authorizations as required in this Section, Franchisee shall have the right, without obligation, to terminate this Franchise immediately.

14.0 Required Reports

14.1 Annual Construction Report

Not later than the sixtieth (60th) day after the close of each calendar year in which any work was performed in the Public Way or on Park Properties by Franchisee, the Franchisee shall provide the Baltimore City Department of Transportation and, in regard to installations on Park Properties, the Department of Recreation and Parks with the following:

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- 1 A. An updated “as-built” map clearly indicating each Communications Facility,
2 control box, and associated network route installed by Franchisee or its
3 contractors in the Public Way or on Park Properties. Specific identification of
4 attachments to City-owned structures or structures owned by a third party
5 located in the Public Way or on Park Properties. Specifying owner of
6 underlying facility (i.e., city, Baltimore Gas and Electric Company); and
- 7 B. A cumulative written list of the permits that the Franchisee has received from
8 the city through the last day of the preceding calendar year. The report shall
9 list the type of permit, the location(s) of the work being performed under the
10 permit, the date the work started or is projected to start, and the date the work
11 stopped or is projected to stop. The Franchisee shall omit a permit from this
12 list after such permit has expired and has not been renewed for three (3)
13 consecutive months.

14 Franchisee shall ensure that all drawings, maps, illustrations, or depictions required under
15 this Section are drawn to scale, show all existing utilities, and comply with Green Book
16 standards.

17 Additionally, within sixty (60) days after completion of the installation of any
18 Communications Facility in the Public Way or on Park Properties, Franchisee shall
19 provide the Baltimore Department of Transportation and, in regard to installations on
20 Park Properties, the Department of Recreation and Parks an “as built” survey of the
21 Communications Facility.

22 **15.0 Default and Remedies**

23 Each of the following events shall constitute a default of this Franchise (“Default”):

- 24 (a) If either Party fails to perform or comply with any of the material conditions or
25 covenants of this Franchise Agreement and such failure continues for a period of
26 thirty (30) calendar days after written notice thereof, unless the performance
27 cannot be reasonably completed within the thirty (30) day period, and the Party
28 has commenced good faith efforts to perform and is diligently proceeding to
29 complete performance to the satisfaction of the other Party;
- 30 (b) If Franchisee fails to pay the Franchise Fee or other sums herein specified within
31 thirty (30) calendar days after receipt of written notice of said default; or
- 32 (c) If Franchisee is adjudicated as bankrupt or becomes insolvent.

33 **15.1 Default by Franchisee**

34 In the event of default by Franchisee, the City shall have the right, while any default
35 continues, beyond any applicable cure period, by giving thirty (30) calendar days
36 written notice to Franchisee, to terminate this Franchise Agreement and promptly
37 remove or require Franchisee to promptly remove Communications Facilities from
38 the Public Way and Park Properties, at Franchisee’s sole cost and expense, without
39 prejudice to any other remedy which the City might be entitled to pursue, including
40 but not limited to City’s rights under Section 17 to eliminate any interference caused

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1 by Communications Facilities . No portion of the Franchise Fee shall be refunded in
2 the event of a termination on default by Franchisee.

3 **15.1.1 Self-Help by City**

4 In the event of any default of this Franchise by Franchisee and upon the
5 expiration of any applicable cure period set forth in this Franchise Agreement,
6 the City may at any time, after notice, cure the default for the account of and at
7 the expense of the Franchisee. If City is compelled to pay or elects to pay any
8 sum of money or to do any act which will require the payment of any sum of
9 money or is compelled to incur any expense, including reasonable attorneys'
10 fees in instituting, prosecuting or defending any action to enforce the City's
11 rights under this Franchise, the sums so paid by City, with all interest, costs
12 and damages, shall be deemed to be an additional Franchise Fee ("Additional
13 Franchise Fee") and shall be due from the Franchisee to City on the first day
14 of the month following the incurring of the respective expenses. Upon request
15 by Franchisee, City shall provide the necessary information for Franchisee to
16 verify all reasonable cost-based charges incurred.

17 **15.2 Default by City**

18 In the event of default by the City, Franchisee shall have the right to pursue any
19 remedies available to it against the City under applicable law or at equity, including,
20 but not limited to, the right to terminate this Agreement after thirty (30) days written
21 notice and an opportunity to cure the default.

22 **16.0 City Termination Right**

23 In addition to the remedies set forth in this Section 16, the City shall have the right to
24 terminate this Agreement (i) if the City is mandated by law, a court order or decision, or
25 the federal or state government to take certain actions that will cause or require the
26 removal of the Communications Facilities from the Public Way and Park Properties; or
27 (ii) if Franchisee's licenses to operate the Communications Facilities and/or provide
28 Wireless Service are terminated, revoked, expired, or otherwise abandoned.

29 **17.0 Radiofrequency Interference**

30 Radiofrequency Interference. Franchisee shall install and operate Communications
31 Facilities of a type and frequency that will not cause radiofrequency interference to any
32 FCC-licensed devices or with respect to the City's existing operations. In the event of an
33 emergency relating to interference, upon notification of such emergency by City,
34 Franchisee shall disconnect its operations and Communications Facilities from a remote
35 location. If Franchisee does not promptly disconnect its operations and Communications
36 Facilities after being notified by the City due to an emergency, City shall be permitted to
37 disconnect Franchisee's operations and Communications Facilities immediately, whether
38 such Communications Facilities are located on a City-owned facility or a third-party
39 facility within the Public Ways or Park Properties. City may perform, or cause to be
40 performed, upon notice to Franchisee, a technical evaluation to determine the cause of
41 interference. If, after considering the results of the inspection and tests or any technical
42 evaluation performed by City, City determines that Franchisee is directly causing

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1 interference to City's operations, City shall promptly notify Franchisee and Franchisee
2 shall immediately cease interfering with City's operations. If Franchisee fails to cease its
3 interference with City's operations within twelve (12) hours of such notice, City shall
4 have the right to take any steps it deems necessary, in its reasonable judgment and
5 discretion, to cause the interference to cease. Franchisee shall be responsible for all
6 reasonable and actual payments and/or expenses relating to the City's actions to correct
7 any interference problems caused by Franchisee.

8 For a period of thirty (30) calendar days after City determines that Franchisee's
9 operations have caused interference, Franchisee may request, and, if its request is
10 approved by the City, may perform intermittent testing of potential cures during specified
11 hours. City's approval of a request to remain and conduct intermittent testing during
12 specified hours shall not be unreasonably withheld, delayed or conditioned.

13 City's sole liability to Franchisee for action taken pursuant to this Section 17 shall consist
14 of the value of any damage or repairs made necessary to affected Communications
15 Facilities by willful or grossly negligent acts of the City. In no event shall the City be
16 liable for loss in value of Franchisee's Communications Facilities, or any loss of revenue
17 by Franchisee resulting from removal.

18 **18.0 MPE Evaluation**

19 Upon installation, Franchisee shall provide the City an up-to-date report on Maximum
20 Permissible Exposure (MPE) regarding radio frequency emissions and maximum
21 exposure for humans for each type of Communications Facility installed on Public Ways
22 and Parks Properties. The Parties agree that the requirement for Franchisee to provide the
23 reports in the previous sentence complies with all Applicable Law. In the event of any
24 violation of applicable laws related to radio frequency emissions, Franchisee shall take
25 immediate corrective actions and, if notice of the violation has been provided by the City,
26 provide the City with an updated MPE study from a licensed engineer confirming
27 compliance and corrective actions with respect to the frequency emissions associated with
28 its Communications Facilities. Within thirty (30) days after it receives an MPE report
29 from the Franchisee, the City shall make the report available for public review on the City
30 website.

31 **19.0 Interest**

32 If Franchisee fails to make any payment under this Agreement when due, such amounts
33 shall accrue interest from the date such payment is due until paid, including accrued
34 interest, at an annual rate of ten percent (10%) or, if lower, the highest percentage allowed
35 by law.

36 **20.0 Taxes**

37 Franchisee agrees that it will be solely responsible for the payment of any and all
38 applicable taxes, fees and assessments levied on its ownership, use and maintenance of
39 the Communications Facilities.

1 **21.0 Liability and Indemnity**

2 **21.1 Indemnification**

3 Franchisee agrees to indemnify, defend and hold harmless City, its elected/appointed
4 officials, departments, employees, agents and representatives from any and all claims,
5 demands, suits and actions including attorneys' fees and court costs, connected
6 therewith, brought against the City, its elected/appointed officials, departments,
7 employees, agents and representatives and arising as a result of any direct willful, or
8 negligent act or omission of Franchisee, its agents, officers or employees EXCEPT for
9 any and all claims, demands, suits and actions, including attorneys' fees and court
10 costs connected therewith, brought against City or City's elected/appointed officials,
11 departments, employees, agents and representatives, arising as a result of the sole,
12 willful, or grossly negligent act or omission of City, its elected/appointed officials,
13 departments, employees, agents and representatives. This indemnification obligation
14 shall survive the termination of this Agreement with respect to claims, demands, suits
15 and actions that arose or accrued during the term of this Agreement.

16 **21.2 Waiver of Claims**

17 Franchisee waives any and all claims, demands, causes of action and rights it may
18 assert against the City on account of any loss, damage or injury to any
19 Communications Facilities or any loss or degradation of the Services as a result of an
20 event or occurrence which is beyond the reasonable control of the City.

21 **21.3 Limitation of the City's Liability**

22 Except as provided for in this Section, the City shall be liable only for the cost of
23 repair to damaged Communications Facilities arising from the gross negligence or
24 willful misconduct of the City, its council or board members, officers, elected
25 trustees, employees, agents, or contractors.

26 **22.0 Insurance**

27 The Franchisee shall procure and maintain during the term of this Franchise the following
28 required insurance coverages:

29 **(a) Workers' Compensation and Employers' Liability Insurance.**

30 Statutory workers' compensation benefits with a limit of liability no less than that
31 required by Maryland law at the time of the application of this provision for each
32 accident. Employers' liability insurance with a limit of \$1,000,000 each
33 accident/disease/policy limit. To the extent allowed by law, this policy shall
34 include a waiver of subrogation in favor of City. Franchisee shall require
35 contractors not covered under Licensee's insurance to obtain and maintain such
36 insurance.

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1 **(b) Commercial General Liability Insurance.**

2 Commercial General Liability Insurance at limits of Two Million Dollars
3 (\$2,000,000.00) per occurrence for claims arising out of bodily injuries or death,
4 and property damages and Three Million (\$3,000,000) general aggregate including
5 contractual liability coverage.

6 **(c) Automobile Liability Insurance.**

7 Commercial Automobile Liability with a combined limit of Two Million Dollars
8 (\$2,000,000.00) each accident for bodily injury and property damages. The
9 insurance shall cover any owned, non-owned, franchised, or hired automobiles
10 used in the performance of this Agreement.

11 **(d) Telecommunications, Media & Technology Errors & Omissions Insurance.**

12 Telecommunications, Media & Technology Errors & Omissions including Cyber
13 Liability Insurance with a limit of Two Million Dollars (\$2,000,000.00) each
14 claim and aggregate.

15 **(e) Umbrella/Excess Liability Insurance.**

16 Coverage is to be in excess of the sum of employers' liability, commercial general
17 liability and automobile liability insurance required above. Limits of liability
18 \$4,000,000 each occurrence, \$4,000,000 aggregate. Licensee may use any
19 combination of primary and excess insurance to meet the total limits required.

20 **(f) Coverage.**

21 The City, Mayor and City Council of Baltimore (in their official capacities) their
22 elected/appointed officials, departments, and employees, shall be covered, by
23 blanket additional insured endorsement, as additional insureds as their interests
24 may appear under this Agreement with respect to liability caused, in whole or in
25 part, by activities performed by Licensee or its employees in connection with this
26 Agreement.

27 Insurance shall apply separately to each insured against whom claim is made
28 and/or lawsuit is brought, except with respect to the limits of the insurer's
29 liability. To the extent of the Franchisee's negligence, the Franchisee's insurance
30 coverage shall be primary insurance as respects to the City, its elected/appointed
31 officials, departments, and employees. Any insurance and/or self-insurance
32 maintained by City, its elected/appointed officials, departments, and employees
33 shall not contribute with the Franchisee's insurance or benefit the Franchisee's in
34 any way to the extent Franchisee is found negligent. Upon receipt of notice from
35 its insurer(s) Franchisee shall provide the City with forty-five (45) days prior
36 written notice of cancellation of any coverage required herein. Insurance is to be
37 placed with insurers with a Best's rating of no less than A:VII, or if not rated with
38 Best's with minimum surpluses the equivalent of Best's surplus size VII and must
39 be eligible to do business in the State of Maryland.

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1 **(g) Certificate of Insurance; Other Requirements.**

2 Prior to the execution of this Agreement and within ten (10) days of each
3 insurance policy expiration date during the term of this Agreement, Franchisee
4 will furnish City with a certificate of insurance (“Certificate”). The Certificate
5 shall reference this Agreement and insurance waivers of subrogation required by
6 this Agreement. City shall be given forty-five (45) calendar days advance notice
7 of cancellation or non-renewal of insurance during the term of this Agreement that
8 is not replaced.

9 **(h) Limits.**

10 The limits of liability set out in this Article 22.0 may be increased or decreased by
11 mutual consent of the parties, which consent will not be unreasonably withheld by
12 either party, in the event of any factors or occurrences, including substantial
13 increases in the level of jury verdicts or judgments or the passage of state, federal,
14 or other governmental compensation plans, or laws that would materially increase
15 or decrease Franchisee’s exposure to risk.

16 **(i) Failure to Maintain Insurance.**

17 Failure of Franchisee to maintain the proper insurance required under this Article
18 22.0 shall result in termination of this Franchise if the breach is not cured upon
19 the expiration of any applicable cure period set forth in this Franchise.

20 **23.0 Assignment and Subletting**

21 Franchisee may not assign, or otherwise transfer all or any part of its privilege in this
22 Franchise without the prior written consent of City; provided, however, that Franchisee
23 may assign its privilege to its parent company, any subsidiary or affiliate of it or its parent
24 company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or
25 more of its stock or assets, in the market defined by the FCC in which the City of
26 Baltimore is located, subject to the assignee assuming all of Franchisee’s obligations
27 hereunder, and subject to any financing entity’s interest, if any, in this Franchise.
28 Notwithstanding anything to the contrary contained in this Franchise, Franchisee may
29 assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in
30 Communications Facilities or in this Franchise to any financing entity, or agent on behalf
31 of any financing entity to whom Franchisee (1) has obligations for borrowed money or in
32 respect of guaranties thereof, (2) has obligations evidenced by bonds, debentures, notes or
33 similar instruments, or (3) has obligations under or with respect to letters of credit,
34 bankers acceptances and similar facilities or in respect of guaranties thereof. Any such
35 assignment to a financing entity or its agent shall be subordinate to the terms of this
36 Franchise Agreement. The City acknowledges that: (i) the State of Maryland has opted
37 into the First Responder Network Authority which is the first nationwide broadband
38 network dedicated for use by police, firefighters, emergency medical services and other
39 first responders (“FirstNet”), and (ii) Franchisee has been selected by FirstNet as its sole
40 private partner, to build, operate, maintain and manage the nationwide broadband
41 network on behalf of FirstNet. As such, Franchisee may use the Franchise Area for
42 FirstNet purposes, without the same being considered an assignment or subletting

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1 hereunder, provided that such use is otherwise in compliance with the requirements of
2 this Agreement.

3 **24.0 Environmental**

4 (a) Except in strict accordance with all applicable laws and regulations, Franchisee shall
5 notat any time within the Public Way or on Park Properties store, treat, transport or
6 dispose of any hazardous substance, hazardous waste or oil as defined by the Resource
7 Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq.,
8 Comprehensive Environmental Response, Compensation, and Liability Act of 1980
9 (“CERCLA”), 42 U.S.C. §§ 9601 et seq., Maryland Environment Article Code Ann.,
10 Title 4, Sec. 4-401, et seq. and Maryland Environment Article Code Ann., Title 7, subtitle
11 2.

12 (b) “Environmental Conditions” as used in this Agreement shall mean discovered or
13 undiscovered contaminants, pollutants, or toxic substances affecting health or the
14 environment, in any way arising from or related to the subject matter of this Franchise
15 which could, or do, result in any damage, loss, cost or expense to, or liability, by City to
16 any person including a government agency or other entity.

17 (c) In addition to all other indemnifications contained herein, Franchisee specifically agrees
18 to indemnify, reimburse, defend and hold harmless City, its elected/appointed officials,
19 employees, agents and representatives (“Indemnified Parties”) from and against any and
20 all losses, costs, liabilities, including but not limited to liabilities, demands, obligations,
21 claims, suits, actions and expenses, attorneys’ fees, consultant fees and court costs
22 connected therewith, brought against the Indemnified Parties, or incurred by any of them,
23 by reason of injury to persons, including death, and damage to property arising out of
24 Environmental Conditions caused by Franchisee or resulting from any direct, or indirect,
25 willful or negligent acts or omissions of Franchisee, its contractors, agents, or employees
26 in connection Environmental Conditions caused by Franchisee, unless such claims are
27 caused by the negligent act of City. Notwithstanding anything to the contrary herein,
28 Franchisee agrees to defend, indemnify and hold harmless the Indemnified Parties from
29 and against all administrative and judicial actions and rulings, claims, causes of action,
30 demands and liability including, but not limited to, damages, costs, expenses,
31 assessments, penalties, fines, losses judgments and reasonable attorney fees that the
32 Indemnified Parties may suffer or incur due to the existence of any hazardous substances
33 on the Franchise Area, in the Public Way or on Parks Property or migration of any
34 hazardous substance to other properties or the release of any hazardous substance into the
35 environment, that arise from the Franchisee’s and or its representatives activities on the
36 Franchise Area, the Public Way or Parks Property. The indemnifications in this section
37 specifically include, without limitation, costs incurred in connection with any
38 investigation of site conditions or any cleanup, remedial, removal or restoration work
39 required by any governmental authority. This provision shall be in addition to, and
40 separate from, any remedies available to City for breach by the Franchisee of its
41 obligations under any of the provisions of this Agreement and shall in no way limit any
42 recourse that the City may have at the time against Franchisee pursuant to any federal,
43 state or local laws. The provisions of this section shall survive the termination or
44 expiration of this Agreement.

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1 (d) City represents to the best of its knowledge, without having made inquiry that there is no
2 hazardous substance within the Public Way or on Park Properties. Hazardous substance
3 is any substance identified as hazardous, toxic or dangerous in any applicable federal,
4 state or local law or regulation. City shall not introduce or use any hazardous substance
5 in the Public Way or Park Properties in violation of any applicable law. City shall be
6 responsible for, and shall promptly conduct any investigation into and remediation of, as
7 required by any applicable environmental laws, all spills or other releases of any
8 hazardous substance to the extent caused by the City, its employees, agents and
9 contractors that have occurred or which may occur in the Public Way or on Park
10 Properties. City agrees to defend, indemnify and hold harmless the Franchisee from and
11 against any and all administrative and judicial actions and rulings, claims, causes of
12 action, demands and liability (collectively, "Claims") including, but not limited to,
13 damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable
14 attorney fees that the Franchisee may suffer or incur due to the existence of any hazardous
15 substances in the Public Way or Park Properties or the migration of any hazardous
16 substance to other properties or the release of any hazardous substance into the
17 environment (collectively, "Actions"), that arise from the City's activities on the
18 Franchise Area to the extent allowable under subsection 5-303 (a), (b) and (c) of the
19 Courts and Proceedings Article of the Maryland Annotated Code. City agrees to defend,
20 indemnify and hold Franchisee harmless from Claims resulting from Actions in the
21 Franchise Area caused by City prior to and during the initial term and any and all renewal
22 terms. The indemnifications in this section specifically include, without limitation, costs
23 incurred in connection with any investigation of site conditions or any cleanup, remedial,
24 removal or restoration work required by any governmental authority. In the event that
25 Franchisee discovers any hazardous substances on, under, or adjacent to the Franchise
26 Area, which presence was not caused by Franchisee, its employees, agent or contractors,
27 Licensee shall immediately notify the City and the City shall have the right to cure the
28 condition within five (5) days from the date of notice. If the City elects not to cure or
29 fails to do so within five (5) days of the notice from Licensee, then Franchisee shall have
30 the right to terminate the Agreement for the impacted portion of the Franchise Area,
31 Public Way or Park Properties, at no cost or liability. This Section shall survive the
32 termination or expiration of this Agreement.

33 **25.0 Notices**

34 All notices, requests, demands, and other communications hereunder shall be in writing and
35 shall be deemed given if personally delivered or by certified mail, return receipt requested to
36 the following addresses:

37 City: The Mayor and City Council of Baltimore
38 Department of Transportation
39 Attn: Director
40 417 E. Fayette Street, Fifth Floor
41 Baltimore, Maryland 21202

42 *with a copy which shall not constitute legal notice to:*

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1 Baltimore City Department of Real Estate
2 Room 304 City Hall
3 100 North Holliday Street
4 Baltimore, Maryland 21202
5 410-396-4768
6 410-528-1437 (fax)

7 All Franchise Fee payments to the City should be mailed to the following address and to the
8 attention of:

9 Director of Finance
10 Bureau of Treasury Management
11 Collections Division
12 200 N. Holliday Street
13 Baltimore, Maryland 21202

14 **Franchisee:**

15 New Cingular Wireless PCS, LLC
16 Attn: Network Real Estate Administration
17 1025 Lenox Park Blvd NE, 3rd Floor
18 Atlanta, GA 30319
19 Re: Baltimore City Franchise Agreement (Baltimore, MD)
20 Fixed Asset #: 13807246

21 **With a required copy to:**

22 New Cingular Wireless PSC, LLC
23 Attn: Legal Department, Network Operations
24 Re: Baltimore City Franchise Agreement (Baltimore, MD)
25 Fixed Asset #: 13807246
26 208 S. Akard Street
27 Dallas, TX 75202-4206

28 **26.0 Franchisee Point of Contact Relating to Communications Facilities**

29 Appropriate Franchisee staff shall be available to the employees of any City department
30 having jurisdiction over Franchisee’s activities twenty-four (24) hours a day, seven (7) days a
31 week, regarding problems or complaints resulting from the attachment, installation,
32 operation, maintenance, or removal of Communications Facilities . The City may contact the
33 network control center operator at 1-800-638-2822 regarding such problems or complaints.

34 **27.0 Miscellaneous**

35 **27.1 Incorporation of Prior Agreements**

36 This Franchise contains all of the agreements of the parties hereto with respect to any
37 matter covered or mentioned in this Franchise, and no other agreement or
38 understanding pertaining to any such matter shall be effective for any purpose. No

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1 provision of this Franchise may be amended or added to except by an agreement in
2 writing signed by the parties hereto or respective successors in interest.

3 **27.2 Non-Waiver**

4 Failure of either party to insist on strict performance of any of the conditions,
5 covenants, terms or provisions of this Franchise or to exercise any of its rights
6 hereunder shall not waive such rights, but each party shall have the rights to enforce
7 such rights at any time and take such action as might be lawful or authorized
8 hereunder, either in law or equity. The receipt of any sum paid by Franchisee to City
9 after a breach of this Franchise shall not be deemed a waiver of such breach unless
10 expressly set forth in writing.

11 **27.3 Taxes**

12 (a) Franchisee, upon presentation of sufficient and proper documentation will pay,
13 within thirty (30) days, an amount equal to its proportional share of any taxes
14 imposed upon any entity which is directly attributable to the improvements
15 constructed by Franchisee, provided that Franchisee will be entitled to appeal any
16 such increase payable by it.

17 (b) Franchisee shall indemnify City from any and all liability, obligation, damages,
18 penalties, claims, liens, costs, charges, losses and expenses (including without
19 limitation, reasonable fees and expenses of attorneys, expert witnesses and
20 consultants), which may be imposed upon, incurred by or be asserted against City
21 in relation to the taxes owed or assessed on the Franchise Area and directly
22 attributable to the improvements constructed by Franchisee.

23 **27.4 Force Majeure**

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

34 **27.5 Governing Law; Jurisdiction**

35 This Franchise Agreement shall be construed in accordance with the laws of the State
36 of Maryland, without reference to its conflicts of law principles. If suit is brought by
37 a party to this Agreement, the parties agree that trial of such action shall be vested
38 exclusively in the state courts of Maryland, or in the United States District Court for
39 the District of Maryland.

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1 **27.6 Change in Law and Severability**

2 In the event that any legislative, regulatory, judicial, or other action becomes effective
3 and settled law and affects the rights or obligations of the parties, or establishes rates,
4 terms or conditions for the construction, operation, maintenance, repair or
5 replacement of Communications Facilities within the Franchise Area, that differ, in
6 any material respect from the terms of this Agreement (“New Law”), then either party
7 may, upon thirty (30) days written notice, require that the terms of this Agreement be
8 renegotiated to conform to the New Law. Such conformed terms shall then apply on a
9 going forward basis for all existing and new Communications Facilities, unless the
10 New Law requires retroactive application, in which case such new terms shall apply
11 retroactively, as required by the New Law. In the event that the parties are unable to
12 agree upon new terms within 90 days after Notice, then the rates contained in the New
13 Law shall apply from the 90th day forward until the negotiations are completed, or a
14 party obtains a ruling regarding the appropriate conforming of terms from a
15 commission or court of competent jurisdiction.

16 **27.7 Representations**

17 Each of the parties to this Agreement represents and warrants that it has the full right,
18 power, legal capacity, and authority to enter into and perform the parties’ respective
19 obligations hereunder and that such obligations shall be binding upon such party.

20 **27.8 Amendment**

21 This Agreement may not be amended except pursuant to a written instrument
22 evidencing agreement by both parties.

23 **27.9 MBE/WBE Compliance**

24 (a) Franchisee to Comply. Franchisee agrees to comply with the City's statutes,
25 ordinances and regulations regarding participation by minority business
26 enterprises (“MBEs”) and women’s business enterprises (“WBEs”) as if it were a
27 contractor receiving funding from the City, provided that enforcement of this
28 Section shall be exclusively by way of liquidated damages and in no event shall
29 the City seek to suspend or rescind the Franchise for any violation of this Section.
30 The Franchisee shall use reasonable, good faith efforts to meet a goal for
31 participation by MBEs and WBEs for purchases and construction contracts as
32 established by the City's Minority and Women's Business Opportunity Office
33 (“MWBOO”). MWBOO shall administer the provisions of this Section on behalf
34 of the City, and Franchisee shall comply with MWBOO rules and requirements.

35 (b) Documentation to the City on MBE/WBE Participation. Six (6) months after the
36 Effective Date and every six (6) months thereafter while upgrade construction
37 under this Agreement is in progress, and annually thereafter, the Franchisee shall
38 submit to the City written documentation, including executed contracts, service
39 agreements and utilization commitment forms, that shall identify the particular
40 MBEs/WBEs that are (i) contracting directly with the Franchisee; or (ii)
41 subcontracting with prime contractors who contract directly with Franchisee. The
42 documentation submitted to the City shall specify the dollar value of the

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1 participation, type of work to be performed, and such other information as the
2 City may reasonably request.

3 (c) Waiver of MBE/WBE Goals. In the event that, after the use of reasonable, good
4 faith efforts to meet the goals for MBE and WBE participation established
5 pursuant to this Section, the Franchisee is able to demonstrate to the City's
6 satisfaction that sufficient qualified and willing MBEs and WBEs are unavailable,
7 the Franchisee may request a waiver or reduction of the MBE/WBE goals.

8 (d) Report on MBE/WBE Compliance. Six (6) months after the Effective Date and
9 every six (6) months thereafter, the Franchisee shall submit to MWBOO a report
10 on its compliance with this Section. Franchisee may satisfy this requirement by
11 copying MWBOO on any such report that it files with another City agency on a
12 semiannual or more frequent basis.

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1 **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in duplicate on the
2 day and year written above.

3 **ATTEST:** **MAYOR AND CITY COUNCIL OF BALTIMORE**

4 _____ **BY:** _____

5 **CUSTODIAN OF THE CITY SEAL** **STEVE SHARKEY**
6 **DIRECTOR**

7 **DEPARTMENT OF TRANSPORTATION**

8 **BY:** _____
9 **REGINALD MOORE, DIRECTOR**

10 **DEPARTMENT OF RECREATION AND**
11 **PARKS**

13 **WITNESS/ATTEST:** **NEW CINGULAR WIRELESS PCS, LLC**

14 **BY: AT&T MOBILITY CORPORATION**
15 **ITS: MANAGER**

16 _____ **BY:** _____ **(SEAL)**

17 **NAME:**

18 **TITLE:**

19 **APPROVED AS TO FORM AND LEGAL**
20 **SUFFICIENCY**

APPROVED BY THE BOARD OF
ESTIMATES

21 _____

22 **CHIEF SOLICITOR**

CLERK

DATE