

**PORT OF PALM BEACH DISTRICT
REQUEST FOR DISCUSSION AND
COMMISSION ACTION**

**NEW BUSINESS
ITEM I-4**

March 7, 2018

PREPARED BY: Jarra Kaczvara Senior Director, Business Development & Communications

SUBJECT: **Approval of Temporary Site License with Cingular Wireless**

BACKGROUND INFORMATION:

AT&T has held a Rooftop Lease on the MOB since 1991. With the MOB demolition project scheduled to begin in July 2018, and the Vertex cell tower not yet constructed, AT&T will need to place a Cellular On Wheels (COW) on the Port in order to service their customers in the Riviera Beach area. This Temporary Site License will provide AT&T the ability to have a small area (approximately 325 sq ft) to place this COW. They will decommission the rooftop equipment and establish service on the COW in the April/May timeframe. The license will be effective April 1 and expire November 1, 2018. AT&T can extend their license for 3 months in the event the cell tower is not constructed and then month-to-month thereafter. AT&T will pay \$2 per square foot for the land utilized for the COW, and the exact area will be determined and made a part of the License. AT&T will remove all equipment prior to the end of the term.

ADDITIONAL INFORMATION ATTACHED: No _____ Yes X

FINANCIAL IMPACT: To be determined – approximately \$60/month

RECOMMENDATION: Port Staff respectfully requests the Board of Commissioners approve the Temporary Site License for New Cingular Wireless PCS, LLC and approve execution by the Executive Director.

Respectfully Submitted By:



Manuel Almira, Executive Director

DATE ACTION TAKEN: _____
Approved: _____
Disapproved: _____
Deferred To: _____
Incorporated into Minutes: _____

Motion By: _____
Seconded By: _____
Unanimous: Yes _____ No _____
By: _____

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TEMPORARY SITE LICENSE

LICENSOR: The Port of Palm Beach District
4 East Port Road
Riviera Beach, FL 33419

LICENSEE: **New Cingular Wireless PCS, LLC and its affiliates**

TERM: April 1, 2018 through November 30, 2018
as may be extended pursuant to this License.

COMMENCEMENT DATE: April 30, 2018

LICENSED SITE: WP017/Riviera Beach (FL) - 10070044

1. License of Site. During the Term hereof, Licensor hereby licenses a certain portion of Licensor’s property (the “**Property**”) at the Licensed Site and grants to Licensee the right to install, operate and maintain at Licensee’s expense and risk, temporary communications transmitting and receiving equipment, including (without limitation) antennas, poles, masts, transmission line(s), vehicles and accessories (collectively, the “**Equipment**”) at the Licensed Site. Licensee shall at all times have the unrestricted right to enter or leave the Licensed Site with full and complete access to its Equipment on a 24-hour, seven (7) day per week basis; provided, that Licensee shall comply, at its sole cost, with all security requirements of the Port of Palm Beach, including without limitation, badging. At its discretion, Licensee may take at its expense measures and precautions necessary to protect the Equipment. The parties agree that consideration for this License is the improvement of quality of communications services to Licensor and its customers at the Licensed Site; rent will be charged at \$2.00 per square foot plus sales tax for the area utilized for the Cellular on Wheels. A final drawing of the site will be provided by the Licensor and made a part of the License herein. Should ad valorem taxes be assessed on the site, Licensor will be responsible for such.

2. Extension of Term. At the sole discretion of Licensee, Licensee may extend the Term for one (1) additional period of three (3) months each upon the same terms and conditions by providing Licensor with written notice prior to the end of the Term. If Licensee remains in possession of the Licensed Site after the expiration of this License, then Licensee will be deemed to be occupying the Licensed Premises on a month-to-month basis.

3. Removal of Equipment and Site Condition. Except as set forth herein, Licensee takes the Licensed Site as it finds it and Licensor shall have no responsibility for its condition or any damage suffered by Licensee or any other person due to such condition. Unless otherwise mutually agreed by the parties, Licensee shall remove all of the Equipment prior to the end of the Term, and any extensions thereof, and shall leave the Licensed Site in substantially the same condition that existed as of the date of this License, ordinary wear and tear and occurrences for which Licensee is not responsible hereunder, excepted.

4. Indemnification; No Consequential or Indirect Damages. Licensee shall indemnify and hold Licensor harmless against any liability or loss from personal injury or property damage resulting from or arising out of the use or occupancy of the Property by Licensee or its employees or agents, provided, however, Licensee shall have

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no obligation to indemnify or hold harmless against any such liabilities and losses as may be due to or caused by the acts or omissions of Licensor or its employees or agents. Licensor shall indemnify and hold Licensee harmless against any liability or loss from personal injury or property damage resulting from or arising out of (1) the use or occupancy of the Property by Licensor or its employees or agents or (2) contamination of the Property subsurface or structures with hazardous substances; provided, however, Licensor shall have no obligation to indemnify or hold harmless against any such liabilities and losses as may be due to or caused by the acts or omissions of Licensee or its employees or agents. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Licensor and Licensee each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

5. Operation of Equipment. Licensee will install, operate and maintain its Equipment in accordance with applicable laws and regulations so as not to cause interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with any radio or television transmitting or receiving equipment whether or not such equipment is located on the Licensed Site. In the event that Licensee's Equipment causes interference with other radio or television transmissions, Licensee will promptly take all reasonable steps necessary to correct and eliminate the same. If Licensee is unable to eliminate the interference within a reasonable period of time, Licensee agrees to remove the Equipment from the Licensed Site and this License shall be terminated.

6. Assignment. Licensee shall not have the right to assign this License, without securing the consent of Licensor.

7. Insurance.

(a) Throughout the Term, Licensee will purchase and maintain in full force and effect such general liability policy as Licensee may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Notwithstanding the foregoing, Licensee shall have the right to self-insure such general liability coverage.

(b) Licensor and Licensee hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

(c) Subject to the property insurance waivers set forth in subsection 7(b), Licensor and Licensee each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or a breach of any obligation of the indemnifying party under this Lease. The indemnifying party's obligations under this section are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and the indemnified party's granting it the right to control the defense and settlement of the same.

(d) Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this Section 11 shall survive the expiration or termination of this Lease.

(e) Licensee shall not be responsible to Licensor, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property.

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8. Electrical Service/Telephone Service. Licensee agrees, at Licensee's sole cost and expense, to pay for the electric service and fees needed for the operation of Licensee's equipment. Licensor agrees to grant the electric utility company any necessary permission, including temporary easement, for the electric line and meter installation, should the electric utility company require written permission or temporary easement.

8. Notices. Any notice or demand required or permitted to be given or made hereunder shall be deemed given when received. Notices may be sent by messenger delivery, overnight delivery, or by certified mail in a sealed envelope, postage prepaid,

addressed in the case of Licensor to:

The Port of Palm Beach District
4 East Port Road
Riviera Beach, FL 33419

and addressed in the case of Licensee, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: 10070044; Cell Site Name: WP017 (FL)
Fixed Asset No: 10070044
575 Morosgo Drive
Atlanta, GA 30324

With a copy to Licensee's Regional Counsel:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: 10070044; Cell Site Name: WP017 (FL)
Fixed Asset No: 10070044
208 S. Akard Street
Dallas, Texas, 75202-4206

10. Waiver. Failure or delay on the part of Licensor or Licensee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

11. Prior Negotiations. This License constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements.

12. Amendment. No revision of this contract shall be valid unless made in writing and signed by duly authorized officers or representatives of Licensee and Licensor.

13. Licensor's Representations. Licensor represents and warrants that it owns or otherwise controls the Licensed Site during the Term of this License and that Licensor has full authority to execute and deliver this License.

14. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State in which the Licensed Site is located.

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IN WITNESS WHEREOF, the parties have executed this License as of the ____ day of _____, 2018.

LICENSOR:

Port of Palm Beach District

By: _____
Name: _____
Title: _____

LICENSEE:

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

By: _____
Name: _____
Title: _____

