



**Committee:** Directly to Council  
**Committee Review:** N/A  
**Staff:** Ludeen McCartney-Green, Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #

AGENDA ITEM 3G  
June 15, 2021  
Introduction

## SUBJECT

Franchise Agreement for Use of Public Right-of-Way: New Cingular Wireless PSC, LLC, by its manager, AT&T Mobility Corporation.

Lead Sponsors: Council President at the request of the County Executive

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Franchise Agreement – No Council vote expected

## DESCRIPTION/ISSUE

Resolution to approve Franchise Agreement for Use of Public Right-of-Way: New Cingular Wireless PSC, LLC

## SUMMARY OF KEY DISCUSSION POINTS

### This report contains:

<u>This packet includes:</u>	<u>Circle</u>
Draft resolution	©1-2
Memorandum from County Executive	©3
Proposed Franchise Agreement	©4
Proof of Publication	©23

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**MEMORANDUM**

June 10, 2021

TO: County Council

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: **Introduction:** Resolution to approve Franchise Agreement for Use of Public Right-of-Way: New Cingular Wireless PSC, LLC

At the request of the County Executive, the Council President is scheduled to introduce a resolution on June 15, 2021 that would grant a franchise agreement to New Cingular Wireless PSC, LLC (Cingular), whose manager is AT&T Mobility Corporation, to construct and maintain telecommunications facilities in the public right-of-way. As stated in the County Executive's Memorandum, the proposed franchise agreement is for a 15-year term and the franchise requires New Cingular to pay the safe harbor annual right-of-way fee permitted by the FCC of \$270.00 per facility ©2. It also reserves the County's authority to adjust the fee at any time based on a study of the County's actual costs, or if applicable law permit, to charge a fee that is not cost-based.

The Executive recommends approval of the attached franchise agreement. Under Chapter 49 of the County Code, the Council has sole authority to grant a franchise for use of the public right-of-way. Cingular published notice of the franchise application, and the Executive did not receive any public comments. Since no comments were received, the Executive was not required to conduct a public hearing on the franchise application.

A draft resolution for approval of the Cingular franchise agreement is attached on ©1-2. A public hearing is tentatively scheduled for June 29, 2021 at 1:30pm and Council action is tentatively scheduled for June 29, 2021.

<u>This packet includes:</u>	<u>Circle</u>
Draft resolution	1-2
Memorandum from County Executive	3
Proposed Franchise Agreement	4
Proof of publication	24

Resolution No.: \_\_\_\_\_  
Introduced: June 15, 2021  
Adopted: \_\_\_\_\_

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY MARYLAND

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Lead Sponsor: Council President at the request of the County Executive

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Subject: Grant of franchise to New Cingular Wireless PSC, LLC to use the public right-of-way.

**Background**

1. Sections 49-20 and 49-21 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
  - a) the franchise applicant publishes notice of the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
  - b) the County Executive investigates the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;
  - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after the last notice of the application is published;
  - d) the Executive makes a written recommendation to the Council about the franchise, including findings about the value of the franchise, any response to objections that have been raised, and any other relevant issues; and
  - e) the Council decides that the franchise is expedient and proper.
2. On March 1, 8, and 15, 2021, New Cingular Wireless PSC, LLC published notice of its application for a franchise to use the public right-of-way. The Executive received no objection to the franchise by the March 25, 2021 deadline and was therefore not required to conduct a hearing on the franchise application.
3. April 29, 2021 the Council received the Executive's recommendation to grant a franchise to New Cingular Wireless PSC, LLC and a proposed franchise agreement.

**Action**

The County Council for Montgomery County Maryland approves the following resolution:

The County Council finds that granting a franchise to New Cingular Wireless PSC, LLC for use of the public right-of-way is expedient and proper. The Council grants the franchise under the terms of the attached franchise agreement.

This is a correct copy of Council action.

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Selena Mendy Singleton, Esq. Clerk of the Council

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**OFFICE OF THE COUNTY EXECUTIVE**

**Marc Elrich**  
*County Executive*

April 28, 2021

TO: Tom Huckler, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Right of Way Franchise Agreement for New Cingular Wireless PSC, LLC

I am pleased to transmit to you a proposed franchise agreement with New Cingular Wireless PSC, LLC (“New Cingular”), whose manager is the AT&T Mobility Corporation. I recommend approval of the agreement.

The proposed franchise is for a fifteen-year term. Pursuant to the Federal Communications Commission (FCC) Small Cell Order, the franchise requires New Cingular to pay the safe harbor annual right-of-way fee permitted by the FCC of \$270.00 per facility and reserves the County’s authority to adjust the fee at any time based on a study of the County’s actual costs, or should applicable law permit, to charge a fee that is not cost-based. The County’s right-of-way study is awaiting submission of information by utilities occupying the right of way and we are seeking ways to conclude the study without this additional information.

Executive staff is available to assist you in the matter. If you have any questions or need for additional information, please contact Clifford L. Royalty at 240-777-6739.

Attachments

cc: Clifford Royalty, Chief, Division of Zoning, Land Use & Economic Development

## **FRANCHISE AGREEMENT (FOR SMALL WIRELESS FACILITIES)**

The County Council for Montgomery County, Maryland, having approved by Resolution No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 2021, a franchise (“Franchise”) to construct and maintain Facilities in the Public Right-of-Way, this franchise agreement (“Franchise Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Montgomery County, Maryland, a body corporate and politic (hereafter the “County”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“New Cingular”).

### **RECITALS**

WHEREAS, under Maryland and County laws, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of telecommunications facilities in the Public Right-of-Way within the limits of the County; and

WHEREAS, New Cingular wishes to construct, install, operate, and maintain Facilities within the Public Right-of-Way; and

WHEREAS, New Cingular has made application to the County for a franchise to construct, install, operate, and maintain the Facilities in, under, over, and upon the Public Right-of-Way of the County, pursuant to Chapter 49 of the Montgomery County Code 2014, as amended; and

WHEREAS, New Cingular has caused said franchise application to be published once a week for three consecutive weeks in one or more newspapers having general circulation in the County, setting forth the location, character and extent of the franchise sought, and stating the terms and compensation to be received therefor; and

WHEREAS, it appears to Montgomery County that the granting of the requested franchise is proper pursuant to Chapter 49 of the Montgomery County Code 2014, as amended.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this Franchise Agreement is entered into by and between the parties subject to the following terms and conditions:

#### **1. DEFINITIONS.**

For the purposes of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. The word “shall” is always mandatory.

**1.1** “Agreement” means this Franchise Agreement.

**1.2** “CAO” means the Chief Administrative Officer of the County or authorized designee.

**1.3** “County” means Montgomery County, Maryland.

**1.4** “Effective Date” means the date of the County Council resolution approving this Agreement.

**1.5** “Facility” means antennas and associated equipment, switches, wiring, cabling, power sources, shelters or cabinets located at the same fixed location as the small wireless facility, as defined at 47 C.F.R. Sec. 1.6002 or successor regulation, placed by New Cingular in the Public Right-of-Way and used or useful in providing Services.

**1.6** “FCC” means the Federal Communications Commission.

**1.7** “Law” means any judicial decision, statute, constitution, ordinance, regulation, tariff, or other applicable legal requirement of the United States Government, State, or County in effect either on the Effective Date or at any time during the presence of Facilities in the Public Right-of-Way.

**1.8** “New Cingular” means New Cingular Wireless PCS, LLC, a Delaware limited liability company, and its lawful successors, assigns, and transferees. New Cingular is a wireless communications carrier licensed by the FCC.

**1.9** “Person” means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association or organization of any kind.

**1.10** “Public Right-of-Way” or “Right-of-Way” means any location in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, sidewalks, or similar property, now or hereafter held by or dedicated to the County for public use.

**1.11** “Services” means personal wireless services and any commingled information services provided via the same Facility, but does not include cable service as defined at 47 U.S.C. §522(6).

## **2. TERM.**

This Agreement shall be for a term of fifteen (15) years, unless it is earlier terminated by either party in accordance with the provisions herein, and shall commence on the Effective Date. This Agreement and any permits issued hereunder are subject to any present and future legislation or resolution that may be enacted by the County Council.

## **3. SCOPE OF FRANCHISE.**

**3.1** Any and all rights expressly granted to New Cingular under this Agreement, which shall be exercised at New Cingular’s sole cost and expense, shall be subject to the prior and continuing right of the County to use any and all parts of the Public Right-of-Way, exclusively or concurrently, with any other Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a real property interest in land in New Cingular, including any fee,

leasehold interest, or easement. The County makes no representations or warranties with respect to the title to the Public Right-of-Way or the nature of the County's interest in the Public Right-of-Way. If there are other interests in the Public Right-of-Way, New Cingular must obtain the necessary consent for its use from each Person who holds any such interest. New Cingular must indemnify and hold the County harmless from any claims or costs arising out of or related to a takings claim or other legal action by reason of New Cingular's use of the Public Right-of-Way.

**3.2** Subject to County Law, and County consent, and New Cingular entering into a lease or license agreement with the County for the use of County poles or property, the County hereby grants a non-exclusive right to New Cingular to occupy the Public Right-of-Way to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace Facilities on County-owned street light poles, or other such County-owned property located in the Public Right-of-Way, for the provision of Services. The grant of the right to occupy the Public-Right-of-Way when attaching to County-owned property does not obligate County to replace any pole or other County-owned equipment to accommodate the Facilities. The County reserves the discretion to approve the attachment to and manner of installation of any of the Facilities on County poles.

**3.3** Subject to County Law, the County hereby further authorizes New Cingular to occupy the Public Right-of-Way to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace its Facilities in or on poles or other property owned by public utility companies or other property owners located within the Public Right-of-Way as may be permitted by the public utility company or property owner, for the provision of Services. To the extent required by Law, New Cingular shall obtain permission from the individual utility or property owner prior at the time that New Cingular undertakes any of the activities permitted by this Agreement. Upon request, New Cingular shall provide documentation of said permission to the County.

**3.4** No Facilities may be attached to County-owned or controlled streetlight fixtures, streetlight bracket arms, or traffic signals.

**3.5** Without limiting any other requirement of County Law, prior to undertaking any construction activity, New Cingular shall provide reasonable advance notice to affected property owners as required by Law, and obtain all permits and other authorizations required by County Law.

**3.6** After receiving County permit approvals, New Cingular shall disclose to the County, in writing, its schedule for the installation and the location of the proposed Facilities at least fifteen (15) days prior to the construction, reconstruction, attachment, installation, location, reattachment, reinstatement, or relocation of the Facilities, excluding maintenance and repairs (including replacement of equipment with substantially similar equipment). The written disclosure from New Cingular must include any drawings and diagrams depicting the location of the proposed facilities and the manner of their installation that were not provided to the County during the permit review process.

**3.7** Except as permitted by applicable Law or this Agreement, in the performance and exercise of its rights and obligations under this Agreement, New Cingular shall not interfere in



any manner with the existence and operation of any public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and County or municipal property without the express written approval of the owners or users of the affected property. This Agreement is not such an approval.

**3.8** New Cingular shall comply with all applicable Law, including the “Miss Utility” law and applicable electrical codes, in the exercise and performance of its rights and obligations under this Agreement. New Cingular hereby acknowledges that the rights granted by this Agreement are subject to the police powers of the County.

**3.9** New Cingular represents and agrees that the Facilities subject to this Agreement will be used exclusively for the rendering of Services and no other purpose, except to the extent that New Cingular is required by State or Federal authorities, in the proper exercise of their jurisdiction over such matters, to make the Facilities available for use by third parties.

**3.10** The rights granted herein are not divisible or assignable, and New Cingular may not permit any other person, other than a person holding a small wireless facilities franchise from the County, to own any part of the Facilities or permit any other person other than a person holding a small wireless facilities franchise from the County or New Cingular’s contractors, to construct, reconstruct, attach, install, operate, maintain, locate, move, remove, reattach, reinstall, relocate, and replace Facilities in the Public Right-of-Way or to own any part of the Facilities.

#### **4. FEES AND TAXES.**

**4.1** The compensation set forth herein is for use of the Right-of-Way for Facilities owned solely by New Cingular and used for the provision of Services. New Cingular may use the Public Right-of-Way to provide additional services only by an express amendment to this agreement, or by separate franchise agreement with the County for Public Right-of-Way use. New Cingular may not permit any other person to place equipment that the person owns or controls as part of that Facility without the express authorization of the County, and the payment of an additional fee to, the County as described below.

**4.2** Without limiting the foregoing, the fees provided for in this Section are not in lieu of any fee or tax to which New Cingular may be subject, or relieve New Cingular of any obligation to collect and remit any tax in accordance with applicable Law. It is not in lieu of fees that may apply to any other person that owns any portion of the Facilities.

**4.3** New Cingular shall pay \$270.00 per annum per Facility for occupancy of the Public Right-of-Way by New Cingular to provide the Services. This amount shall be adjusted annually based on the percentage increase in the annual average CPI-U for Washington-Arlington-Alexandria, DC-VA-MD-WV (or, if there is no such index, the U.S. Bureau of Labor Statistics Index covering the smallest geographical area that includes Montgomery County), with the [2020] annual average serving as the reference period and with the first adjustment being made for the calendar year 2022.

**4.4** New Cingular must remove the Facilities within the timeline specified in Section 5.3 after termination of this Agreement. The County may, at its option, increase any of the fees charged by 2.5 times if New Cingular does not remove its Facilities with this timeline.

**4.5** The annual rent due for each Facility shall be paid in accordance with this paragraph. On the first day of the month following approval of any Facility, New Cingular shall pay to the County the amount owed per annum (as adjusted by CPI) for the approved Facility multiplied by a percentage equal to the number of remaining months in the calendar year divided by 12. Thereafter, on December 31 of every year, New Cingular shall pay County the annual rent owed for the Facility for the following calendar year.

**4.6** The acceptance of any payments shall not be treated as an accord or satisfaction. Upon reasonable notice by the County to audit New Cingular's books and records, New Cingular shall allow such books and records to be reviewed by the County at New Cingular's offices necessary to determine whether the fees owed under this Agreement are being paid. The County may also inspect Facilities to ensure that the fees owed under this Agreement are being paid. If an audit or inspection shows that New Cingular has underpaid the amount due hereunder by 5% or more for any year reviewed, the cost of the audit or inspection shall be paid by New Cingular.

**4.7** The County will charge interest on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate the prime rate charged by the bank the County uses as its main depository, plus 3%.

**4.8** The County may adjust these fees at any time if, based on a study of its actual costs, the County determines that an adjusted fee is a reasonable approximation of costs and the costs are reasonable and non-discriminatory. New Cingular shall reimburse the County for a proportional share of the costs of conducting such study, based on the number of similarly situated providers of personal wireless services or facilities whose compensation for use of the Right-of-Way is based on cost.

**4.9** Should applicable Law permit the County to charge a fee that is not cost-based, the County may adopt any lawful fee after providing New Cingular (30) days' notice.

**4.10** New Cingular shall reimburse the County within thirty (30) days of the receipt of a written request in accordance with Section 9, for all reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed Two Thousand Dollars (\$2,000) in the aggregate. The reimbursement is a one-time fee related to the initial issuance of the Franchise Agreement.

## **5. REMOVAL AND RELOCATION OF THE FACILITIES.**

**5.1** New Cingular understands and acknowledges that the County may require New Cingular to remove and relocate the Facilities. At the County's request, New Cingular shall remove and relocate the Facilities, at New Cingular's sole cost and expense:

**5.1.1** Within ninety (90) days after receipt of prior written notice to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County or other governmental project, facility, or service;

**5.1.2** Immediately where the County determines it is necessary to protect or preserve the public health, safety, or welfare.

**5.1.3** New Cingular must obtain all permits and approvals required by the County before removing or relocating the Facilities. If New Cingular fails to remove or relocate the Facilities as requested by the County in accordance with this paragraph, the County shall be entitled to remove or relocate the Facilities at New Cingular's sole cost and expense. The County will extend the time for New Cingular to preform if the County does not timely process any New Cingular permit applications.

**5.2** The County reserves the right to remove or repair any property upon which the Facilities have been directly placed and, except where County determines that more rapid removal or repair is required to protect or preserve the public health, safety, or welfare, the County shall provide at least ninety (90) days' prior written notice to New Cingular of the County's intent to remove or repair that property.

**5.3** If any part of the Facilities subject to this Agreement is abandoned by not being used in the provision of Services for a period of six (6) months or more, New Cingular promptly shall notify the County, and New Cingular must, at New Cingular's sole cost and expense, promptly remove the abandoned part of the Facilities or dedicate the same to the County. The County shall issue notice to New Cingular as to whether it requires removal or dedication of any part of the Facilities, within thirty (30) days of notice of abandonment. New Cingular must, within (30) days of that notice, at the County's request, either execute such documents of title as will convey all right, title, and interest in the abandoned Facilities, or remove the Facilities. If any permits are required for removal of the Facilities, New Cingular must apply for the permits within thirty (30) days of the notice of removal, and remove the Facilities within thirty (30) days of issuance of all required County permits and approvals required by the County. If New Cingular shall fail to satisfy any of its obligations under this paragraph, the County shall be entitled to remove any part of the Facilities at New Cingular's sole cost and expense.

**5.4** Whenever the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities is performed by New Cingular under this Agreement, and such construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement or relocation shall cause the Public Right-of-Way to be damaged, New Cingular, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way in which the Facilities are located to its previous condition. If New Cingular does not repair the site as required, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of New Cingular and charge New Cingular for the actual costs incurred by the County, or in accordance with any applicable fee schedule of the County. Upon the receipt of a demand for payment by the County, New Cingular shall reimburse the County for such costs within thirty (30) days of New Cingular's receipt of such demand.

## **6. CONSTRUCTION PERMIT AND SECURITY DEPOSIT.**

**6.1** If the construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities shall require any

construction work in the Public Right-of-Way, New Cingular shall apply for the appropriate street opening and other permits required by Law. New Cingular shall perform such construction work (including, by way of example, and not limitation, restoration) as required by the permits and in accordance with all applicable Law.

**6.2** Within thirty (30) days of the completion of any construction, reconstruction, attachment, installation, location, removal, reattachment, reinstallation, replacement, or relocation work, New Cingular promptly shall furnish to the County, in hard copy and electronic format or other format reasonably acceptable to the County, suitable documentation containing a full set of drawings showing, in detail, the exact location of the Facilities in the Public Right-of-Way.

**6.3** New Cingular shall deposit or file with the County a cash security deposit, a surety bond acceptable to the County Attorney, or letter of credit acceptable to the County Attorney within thirty (30) days of the Effective Date, in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by New Cingular of the provisions of this Agreement and the Laws. If New Cingular fails to pay the County any taxes, fees, costs or expenses within sixty (60) days of receipt of notice to pay from the County, or fails to comply with any provision of this Agreement or the Laws that can be remedied by an expenditure from the security fund, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or the Laws. If the Franchise is terminated or revoked for cause by the County, the security deposit, the surety bond, or the letter of credit shall become the property of the County, unless there are no outstanding defaults or County claims, or moneys owed to the County, in which case, New Cingular may request that the County return the security deposit, the surety bond, or the letter of credit to New Cingular.

## **7. INDEMNIFICATION AND WAIVER.**

**7.1** New Cingular agrees at its sole cost and expense to indemnify, protect, defend and hold harmless the County, the county executive, county council members, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the activities or Facilities of New Cingular, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the county executive, county council members, officers, employees, agents, or contractors. Any damage to County property caused by New Cingular or its contractors must be repaired by New Cingular at its cost, including any damage caused by contact or stray voltage.

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

**7.3** New Cingular waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to the Facilities arising in any manner from its occupancy of the Public Right-of-Way or arising from the installation, maintenance, replacement, or relocation of any County-owned facility in the Public Right-of-Way (except to the extent caused by or arising from the gross negligence or willful misconduct of the County). The County is not liable for any damage to Facilities caused by the acts of third parties. The County is not obligated to replace or repair any pole or County facility or property that is damaged, whether or not essential to the Facilities. Nothing herein shall be construed to waive the County's governmental immunity.

## **8. INSURANCE.**

**8.1** New Cingular shall carry and maintain at all times during the term of this Agreement commercial general liability insurance and commercial automobile liability insurance protecting New Cingular and the County via the additional insured provision endorsement in an amount of two million dollars (\$2,000,000) (including any combination of umbrella or excess coverage if needed to meet the limits required) per occurrence (combined single limit), including bodily injury and property damage, and two million dollars (\$2,000,000) (including any combination of umbrella or excess coverage if needed to meet the limits required) aggregate, for personal injury, products-completed operations and independent contractors, per each occurrence resulting from New Cingular's performance pursuant to this Agreement. General liability insurance must include coverage for damage or claims related to radiofrequency emissions. Such insurance shall name the County, the county executive, its council members, officers, and employees agents and contractors as additional insured for any liability arising out of New Cingular's performance pursuant to this Agreement, or suitable additional- insured endorsement acceptable to the County. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled or materially altered to reduce coverage until the County has received at least thirty (30) days advance written notice of such cancellation or change. New Cingular shall be responsible for notifying the County of such change or cancellation and obtaining replacement coverage prior to cancellation, or prior to a change that results in non-compliance with this Section and providing proof that replacement coverage has been obtained prior to such cancellation or change.

**8.2** New Cingular, within thirty (30) days of the Effective Date of this Agreement, shall file with the County the required original certificate(s) of insurance with required endorsements with the County. The certificates and endorsements are, subject to the County's approval, and approval is required prior to any rights granted to New Cingular becoming effective. The documentation shall clearly state all of the following:

**8.2.1** Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative of the same; the name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement shall be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

**8.2.2** New Cingular's insurance is primary to any insurance that the County may possess, including any self-insured retentions the County may have, and any other insurance the County does possess shall not be required to contribute with this insurance.]

**8.3** The certificate(s) of insurance with the required endorsements and notices shall be mailed to:

Risk Management Division  
Montgomery County, Maryland  
Executive Office Building  
101 Monroe Street, 15<sup>th</sup> Floor  
Rockville, Maryland 20850

**8.4** New Cingular shall carry and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount of five hundred thousand dollars (\$500,000) or such other amounts if required by Maryland law, and furnish the County with a certificate of insurance showing proof of such coverage.

**8.5** Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the County prior to the execution of this Agreement.

**9. NOTICES AND BOND DELIVERY.**

**9.1** All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if followed by a hard copy of the same delivered through the U.S. mail or by overnight delivery service as just described, as follows:

County: Chief Administrative Officer  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850

With a copy to: Director, Department of Transportation  
101 Monroe Street  
Rockville, Maryland 20850

New Cingular: New Cingular Wireless PCS, LLC  
Attn: Tower Asset Group – Lease Administration  
Re: Wireless Installation on Structures  
(Montgomery County, Maryland)  
FA No.: \_\_\_\_\_  
1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

with a copy to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Dept. - Network Operations  
Re: Wireless Installation on Structures  
(Montgomery County, Maryland)  
FA No: \_\_\_\_\_  
208 S. Akard Street  
Dallas, TX 75202-4206

Notices shall be deemed given when properly sent and received, refused or returned undelivered. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

Any bond must be delivered or mailed to:

Director, Department of Permitting Services  
2425 Reddie Drive, 7<sup>th</sup> Floor  
Wheaton, Md. 20902

## **10. TERMINATION AND DEFAULT.**

**10.1** This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter fails to diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) business days from receipt of notice.

**10.2** The County reserves the right to revoke the Franchise, subject to reasonable notice and the opportunity to cure as set forth in Section 10.1 for a material breach of the Franchise, including, but not limited to the following: (i) non-payment of franchise fees, (ii) failure to comply with the provisions of the Laws and this Agreement, (iii) use of the Public Rights-of-Way in violation of this Agreement, and (iv) misreporting any required compensation amount.

**10.3** The right to terminate is in addition to the right of the County to terminate any permit, license, lease or other authorization for failure to comply with the terms thereof.

**10.4** Each party retains all of its rights to enforce this Agreement. The County reserves the right to seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement. All of New Cingular's duties to County under this Agreement continue until all the Facilities (a) have been removed, and all work associated with removal completed; or (b) (for those Facilities where the

County is accepting title pursuant to Section 5.3), title documents have been executed by the parties.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** New Cingular shall not transfer or assign the Franchise or Facilities, or any interest in, any part thereof, without the express prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. A change in the control of New Cingular, or New Cingular's parent company shall be treated as a transfer or assignment of the Franchise or Facilities for purposes of this section. "Control" includes working control, however exercised. New Cingular shall give the County prior written notice of any proposed assignment or transfer for which the County's consent is required hereunder. The County Council shall give New Cingular written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to exceed ninety (90) days after the County Council receives New Cingular's request therefor, and the County Council's failure to approve or disapprove any such request within such ninety (90) day period shall be deemed an approval. New Cingular shall provide all information and documents reasonably requested by the County relating to the assignment or transfer.

**11.2** New Cingular understands that this Agreement does not provide New Cingular with exclusive use of the Public Right-of-Way and that the County shall have the right to permit other providers of telecommunications systems to install equipment or devices in the Public Right-of-Way.

**11.3** This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

**11.4** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.5** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

**11.6** New Cingular shall be available to the staff employees of any County department having jurisdiction over New Cingular activities 24 hours a day, 7 days a week, regarding problems or complaints resulting from the construction, reconstruction, installation, location, removal, reattachment, reinstallation, or relocation of the Facilities. The County may contact New Cingular by telephone at 800-852-2671 regarding such problems or complaints. New Cingular shall provide prior written notice to the County as provided for in this Agreement in the event such telephone number changes at any time.

**11.7** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit



is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division. All exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

**11.8** This Agreement is binding upon the successors and assigns of the parties hereto.

**11.9** New Cingular acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, attachment, movement, placement, installation, location, removal, reattachment, reinstallation, replacement, or relocation of the Facilities in the Public Right-of-Way, and such rules, regulations, and specifications, when finalized, shall govern New Cingular's activities hereunder as if they were in effect at the time the Agreement was executed.

**11.10** New Cingular agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 2014, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. New Cingular assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

**11.11** New Cingular represents that it has not retained anyone to solicit or secure this Agreement from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or a bona fide established commercial selling or leasing agency maintained by New Cingular for the purpose of securing business or an attorney rendering a professional legal service consistent with applicable canons of ethics.

**11.12** New Cingular understands that, unless authorized under Section 11B-52 and Chapter 19A of the Montgomery County Code 2014, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

**11.13** It is expressly understood that the County shall not be construed or held to be a partner or associate of New Cingular in the conduct of New Cingular's business.

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

**11.15** Nothing in this agreement shall impair, diminish, supersede, or otherwise affect any authority or remedy that the County may have against New Cingular or any other Person, such as another current or former franchisee. This franchise is granted to New Cingular subject to any such authority or remedy, even if the exercise of that authority or remedy affects the

system. New Cingular agrees to cooperate with the County in any action to enforce County law or any franchise agreement against another Person.

**11.16** Time periods for performance under this Agreement shall be deemed extended day for day for time lost attributable to any delay resulting from any act of God, strike, civil riot, fire, flood, material or labor shortage, restriction by governmental authority, and any other cause not within the reasonable control of the party whose performance is required under the Agreement.

**WITNESS:**

**MONTGOMERY COUNTY,  
MARYLAND**

\_\_\_\_\_  
Selena Singleton, Clerk of the Council

\_\_\_\_\_  
Tom Hucker, President  
Montgomery County Council

The Provisions of this Agreement are agreed to and hereby accepted.

**WITNESS:**

**New Cingular Wireless PCS, LLC**

DocuSigned by:  
*Shannon Powers*  
\_\_\_\_\_  
D3AD8B434796436...

**By: AT&T Mobility Corporation  
Its: Manager**

By: DocuSigned by:  
*Louis Deal*  
\_\_\_\_\_  
529F93196D4B485...

Title: Reac Mgr

13398317v4



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 701 Market Street, Suite 1100 St. Louis, MO 63101		<b>CONTACT NAME:</b> Marsh   U.S. Operations	
<b>INSURED</b> New Cingular Wireless PCS, LLC One AT&T Plaza 208 South Akard Room 1820 Dallas, TX 75202		<b>PHONE (A/C, No., Ext):</b> 866-966-4664	<b>FAX (A/C, No):</b>
CN103150778-GAW-CRT-20-21      N      Y      ms822x      N		<b>E-MAIL ADDRESS:</b> Att.CertRequest@marsh.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A :</b> Old Republic Insurance Company	
		<b>INSURER B :</b>	
		<b>INSURER C :</b>	
		<b>INSURER D :</b>	
		<b>INSURER E :</b>	
		<b>INSURER F :</b>	
		<b>NAIC #</b> 24147	

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-009831937-01      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSP WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		MWZY 31363620	06/01/2020	06/01/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY		MWTB 313635 20 MWZX 31363720 (MI)	06/01/2020 06/01/2020	06/01/2021 06/01/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	MWC 31363820 (AOS)	06/01/2020	06/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Excess Workers' Compensation / Employers' Liability		MWXS 31363920 (OH,WA) See Second Page	06/01/2020	06/01/2021	EL Each Accident / EL Disease 1,000,000 EL Disease-Policy Limit 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
RE: General COI for Master Agreement with Montgomery County MD/2251A0EVL

Montgomery County (101 Monroe Street Rockville MD 20850), the County, the county executive, its council members, officers, and employees agents and contractors is/are included as Additional Insured under the General Liability policy but only with respect to the requirements of the contract between the Certificate Holder and the Insured.

<b>CERTIFICATE HOLDER</b> Montgomery County Attn: Risk Management Division 101 Monroe Street, 15th Floor Rockville, MD 20850	<b>CANCELLATION</b> <b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc.  <i>Manashi Mukherjee</i>
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**ADDITIONAL REMARKS SCHEDULE**

AGENCY Marsh USA Inc.		NAMED INSURED New Cingular Wireless PCS, LLC One AT&T Plaza 208 South Akard Room 1820 Dallas, TX 75202	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

Excess Workers' Compensation - MWXS 31363920 (OH-WA)  
 Self Insured Retentions  
 OH & WA - \$500,000,000 (except Terrorism)  
 OH & WA - \$600,000,000 Terrorism

\*\*\*\*\*

Excess Automobile Liability - MWZX 31363720 (MI)  
 Combined Single Limit - \$1,000,000  
 Self Insured Retention - \$1,000,000

## **IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS**

This endorsement modifies the notice of cancellation of insurance provided hereunder by adding the following:

- A.** In the event this policy is cancelled for any permissible reason, other than for nonpayment of premium, we shall endeavor to provide advance written notice of cancellation to certificate holders set out in the schedule on file with the Company, after notifying the first Named Insured of such cancellation. Notice of cancellation to certificate holders may be made by any commercially reasonable means, including mail, electronic mail, facsimile transmission or courier service.
- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

## **IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

# OLD REPUBLIC INSURANCE COMPANY

## WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY POLICY

### NOTICE OF CANCELATION TO CERTIFICATE HOLDERS ENDORSEMENT

This endorsement modifies the notice of cancellation of insurance provided hereunder by adding the following:

- A.** In the event this policy is canceled for any permissible reason, other than for nonpayment of premium, we shall endeavor to provide advance written notice of cancellation to certificate holders set out in the schedule on file with the Company, after notifying the Insured first named in item 1 of the Information Page of such cancellation. Notice of cancellation to certificate holders may be made by any commercially reasonable means, including mail, electronic mail, facsimile transmission or courier service.
- B.** This advance written notification of a cancellation of coverage is intended as a courtesy only. Our failure to provide such advance written notification will not extend the policy cancellation date, nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.



# Affidavit of Publication

AD # 00047918

STATE OF Maryland  
COUNTY OF Montgomery

To Wit:

I hereby certify that on the 15th day of March 2021, before me, the subscriber, Ulonda Perkins, a notary public, that the matters of facts set forth are true. Patricia Y. Posey, who being duly sworn according to law, and oath says that she is an authorized agent of The Washington Times, L.L.C., publisher of

## The Washington Times

Circulated daily, in the State of Maryland County of Montgomery, and that the advertisement, of which the annexed is a true copy, was published in said newspaper 3 time(s) on the following dates:

- March 01, 2021
- March 08, 2021
- March 15, 2021



Total Cost: \$695.64

Patricia Y. Posey

As witness, my hand and notarial seal.

[Signature]

ULONDA A. PERKINS  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires December 14, 2023

**PUBLIC NOTICE**

**Proposed Award by  
Montgomery County, Maryland  
of Non-Exclusive Franchise to  
New Cingular Wireless PCS, LLC**

New Cingular Wireless PCS, LLC (AT&T) has submitted an application for a non-exclusive franchise in Montgomery County, Maryland to attach, install, operate, construct and maintain telecommunications facilities within the Public Rights-of-Way throughout the County for the purpose of operating its wireless telecommunications system. The facilities may be installed on new or existing structures and below ground.

AT&T has proposed to pay Montgomery County's reasonable expenses relating to the preparation, issuance, implementation and administration of this Agreement, not to exceed two thousand dollars (\$2,000.00) in the aggregate. AT&T has proposed to pay \$270.00 per annum per small wireless facility for occupancy of the Public Right-of-Way, which shall be adjusted annually based on the percentage increase in the relevant annual average price index. The proposed term of the franchise agreement is fifteen (15) years.

Any objection to the proposed granting of the franchise by the County must be filed, in writing, with the County Executive by the close of business on **March 25, 2021** at the Executive Office Building, 2nd Floor, 101 Monroe Street, Rockville, Maryland 20850. Copies of the proposed franchise agreement are available at the Office of the County Attorney, 101 Monroe Street, 3rd Floor, Rockville, Maryland 20850. For further information, contact Clifford L. Royalty, Montgomery County Attorney's Office, at 240-777-6739 and [Clifford.Royalty@MontgomeryCountyMD.gov](mailto:Clifford.Royalty@MontgomeryCountyMD.gov).

March 1,8,15, 2021 Ad#47918