



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2018-2307

Substitute

9/11/2018

Public Hearing: YES NO

Department: Facilities Management

SUBJECT:

Commission District(s): 4 and 7

Approval of Tower Site Lease Agreement between DeKalb County and New Cingular Wireless PCS, LLC

Information Contact: Clyde Stovall, Director – Facilities Management

Phone Number: 404-687-4002

PURPOSE:

Request approval of a Tower Site Lease Agreement between DeKalb County and New Cingular Wireless PCS, LLC, where the County leases Lot Numbers 222 and 227 of the 15th Land District, located at 4154 Redan Road, Stone Mountain, Georgia 30083. New Cingular Wireless PCS, LLC will lease the land and easement together with the right to operate and maintain a base station and to operate antennas, cables, fiber and other equipment on the tower within the Lease Premises for its communications system. The Primary Term of the lease is for five (5) years, effective February 17, 2017, with three (3) additional five (5) year renewal terms. Cingular Wireless PCS, LLC will pay \$3,000 per month rent. Each anniversary date of the term and renewals, the monthly rent will increase by a minimum of 3% per year rent escalation and a maximum of 4% per year rent escalation depending on the Consumer Price Index (CPI) for that year. Funds will be directed to DeKalb County Innovation & Technology Department, as this is for communication services. See the attached lease.

NEED/IMPACT:

Maintain a base station and to operate antennas, cables, fiber and other equipment on the tower within the Lease Premises for its communications system.

FISCAL IMPACT:

No Cost to County

RECOMMENDATION:

Recommend approval of the Tower Site Lease Agreement between DeKalb County and New Cingular Wireless PCS, LLC; Authorize the Chief Executive Officer to execute the lease agreement.

ADDITIONAL INFORMATION:

Prior County Lease Agreement: November 19, 1996, pursuant to a Master Lease Agreement dated October 3, 1996

Exhibit A

Lease Premises Legal Description and Drawing

Exhibit A

AT&T SITE 209.3 - REDAN ROAD FIRE STATION
OVERALL PARENT SITE

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 222 & 227 OF THE 15TH DISTRICT OF DEKALB COUNTY, GEORGIA, BEING A 20-FOOT-WIDE STRIP OF LAND THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point on the North line of the Redan Road 50-foot right of way, 629.05 feet Easterly as measured along said right of way line from the intersection of said right of way line with the Eastern line of the 80-foot right of way of South Indian Creek Drive; PROCEED THENCE North 4 degrees 32 minutes 47 seconds East a distance of 522.17 feet to a point; thence South 78 degrees 13 minutes 04 seconds East a distance of 114.87 feet to a point; thence South 50 degrees 39 minutes 29 seconds East a distance of 171.86 feet to an iron pin on the bank of Snapfinger Creek; thence South 30 degrees 15 minutes 21 seconds East a distance of 99.62 feet to a point; thence South 21 degrees 05 minutes 46 seconds West a distance of 358.38 feet to a point on said Redan Road right of way line; thence North 81 degrees 06 minutes 40 seconds West a distance of 187.31 feet to the Point of Beginning.

AT&T SITE 209.3 - REDAN ROAD FIRE STATION
ACCESS EASEMENT

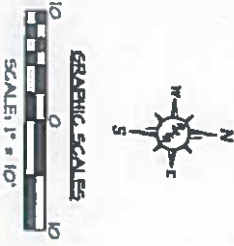
ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOTS 222 & 227 OF THE 15TH DISTRICT OF DEKALB COUNTY, GEORGIA, BEING A 20-FOOT-WIDE STRIP OF LAND THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT on the North line of the 50-foot right of way of Redan Road, said point being 684.30 feet Easterly, as measured along said right of way line, from the intersection of said right of way line with the Eastern line of the 80-foot-wide right of way of South Indian Creek Drive; PROCEED THENCE North 24 degrees 44 minutes 13 seconds East along the centerline of said 20-foot-wide strip of land a distance of 82.17 feet to a point; thence North 83 degrees 59 minutes 03 seconds East along the centerline of said 20-foot-wide strip of land a distance of 94.80 feet to a point; thence North 60 degrees 25 minutes 18 seconds East along the centerline of said 20-foot-wide strip of land a distance of 49.77 feet to a point; thence North 20 degrees 43 minutes 37 seconds East along the centerline of said 20-foot-wide strip of land a distance of 173.92 feet to a point; thence along a curve to the left an arc distance of 157.53 feet, along the centerline of said 20-foot-wide strip of land, said curve having a radius of 74.29 feet and a chord of 129.63 feet bearing North 53 degrees 51 minutes 57 seconds West, to a point; thence North 26 degrees 36 minutes 37 seconds West along the centerline of said 20-foot-wide strip of land a distance of 14.70 feet

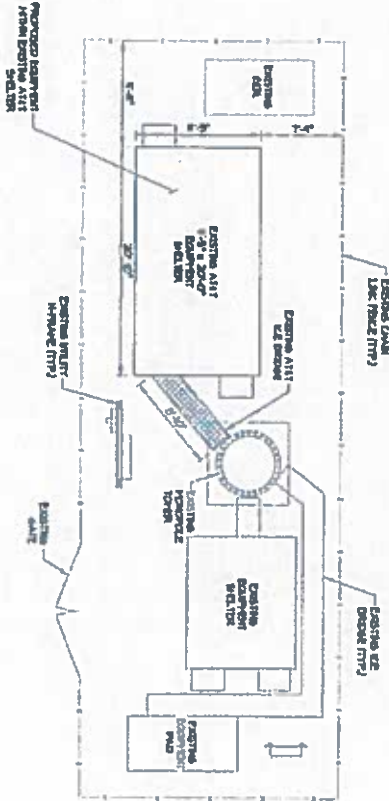
Exhibit B

Depiction of Tower & Facilities

EXHIBIT B



ASBUILT



C-1
 PROJECT: 6A5553
 DATE: 08/11/11
 DRAWN BY: PM1
 CHECKED BY: PM1
 DATE: 08/11/11

6A5553
OVERALL SITE PLAN

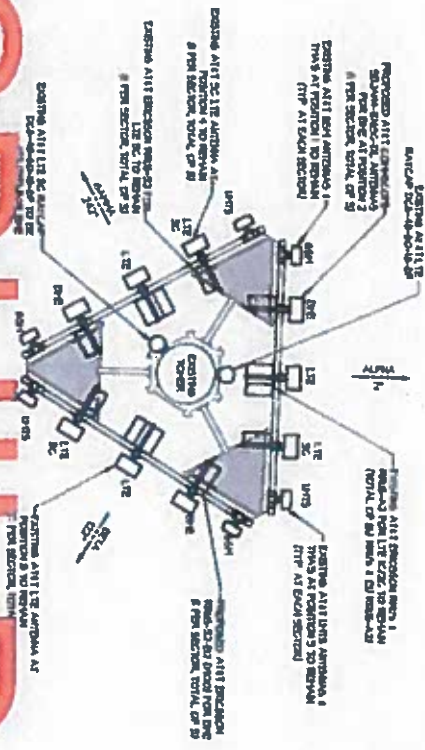
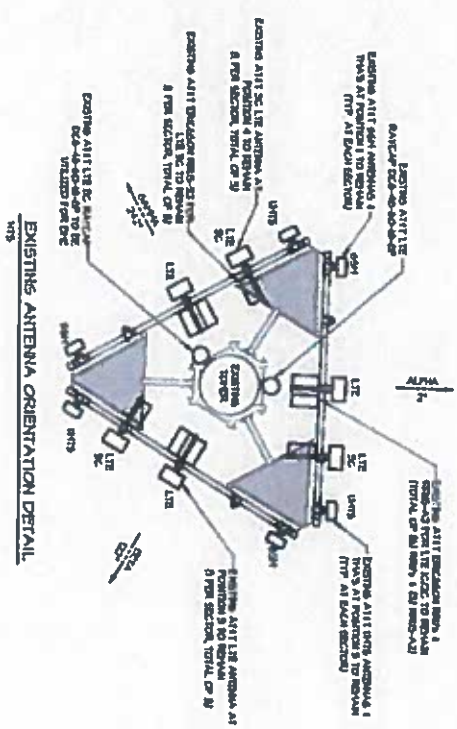
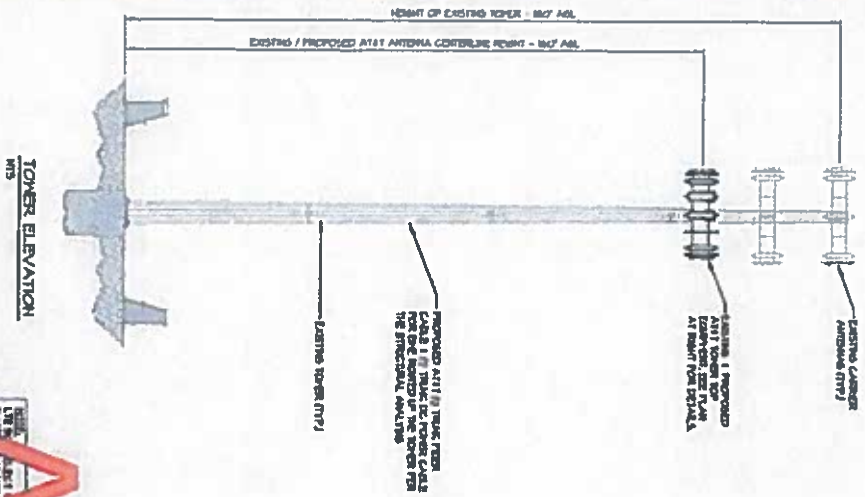
NO.	DATE	DESCRIPTION
0	08/11/11	ISSUED FOR CONSTRUCTION



EXHIBIT B

CONTRACTOR TO OBTAIN FROM ALL AIT11 TOWER BUILDERS & COMPONENTS SUPPLIERS THE TOWER DESIGN REQUIREMENTS, THE EXISTING ANTENNA ORIENTATION FROM 1989 AND TO DRAWING SET.

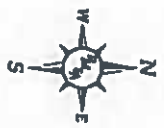
FOR A FULL AND COMPLETE TOWER STRUCTURAL EVALUATION FOR THE PROPOSED TOWER STRUCTURAL ANALYSIS BY OTHERS.



ASBUILD



- DO NOT INSTALL ANTENNAS OR Wires AT A HEIGHT GREATER THAN THE EXISTING TOWER HEIGHT.
- NO CONSTRUCTION SHALL OCCUR ON THE TOWER.
- CONTRACTOR TO COMPLETE ALL NECESSARY WORK REQUIRED FOR THE INSTALLATION OF ALL ANTENNAS AND Wires TO BE INSTALLED TO THE TOWER FROM THE STRUCTURAL ANALYSIS.
- ALL ANTENNAS AND Wires TO BE INSTALLED TO THE TOWER SHALL BE INSTALLED TO THE TOWER FROM THE STRUCTURAL ANALYSIS.
- ALL ANTENNAS AND Wires TO BE INSTALLED TO THE TOWER SHALL BE INSTALLED TO THE TOWER FROM THE STRUCTURAL ANALYSIS.
- ALL ANTENNAS AND Wires TO BE INSTALLED TO THE TOWER SHALL BE INSTALLED TO THE TOWER FROM THE STRUCTURAL ANALYSIS.



	<p>TOWER ELEVATION AND ANTENNA ORIENTATION</p>
<p>DATE: 8/28/88</p> <p>DESCRIPTION: EXISTING ANTENNA ORIENTATION</p>	<p>6A3558</p> <p>C-4</p>

TOWER SITE LEASE AGREEMENT

THIS TOWER SITE LEASE AGREEMENT (“Lease” or “Agreement”) is by and between DEKALB COUNTY, a political subdivision of the State of Georgia (hereinafter referred to as the “County”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its mailing address as provided for in the Notice Section below (hereinafter referred to as the “Tenant”). All parties acknowledge that the County is acting in its proprietary capacity in executing this Agreement and that no regulatory approvals are granted or promised by the County executing this Agreement

WHEREAS, County and Tenant (or its respective predecessor-in-interest) entered into a Lease Agreement dated November 19, 1996 (“Prior Lease Agreement”), which was made pursuant to a Master Lease Agreement dated October 3, 1996, whereby County leased to Tenant certain premises, therein described, that are a portion of the property located at 4154 Redan Road, Stone Mountain, GA 30083 (“Property”); and

WHEREAS, the parties mutually desire to have the Lease replace the Prior Lease Agreement;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Lease Premises.** Subject to the terms and conditions of this Lease, the County hereby leases to Tenant and Tenant leases from the County a portion of the County’s property in Land Lot Numbers 222 and 227 of the 15th Land District, of DeKalb County, State of Georgia, said lands as shown and described in Exhibit “A,” which is incorporated herein by reference, together with a 20’ wide access and utility easement as shown and described in Exhibit “A,” which is incorporated herein by reference, (“Easement”) subject to any and all existing easements (hereafter referred to as “Lease Premises”). The Lease Premises shall be no larger in size than thirty (30’) feet wide by seventy (70’) feet long which is the size of the fenced in compound that is already in existence. The Tenant leases this land and Easement together with the right to operate and maintain a base station and to operate antennas, cables, fiber and other equipment on the tower and within the Lease Premises for its communications system depicted or listed on Exhibit “B.” (collectively, the “Communications Facilities”).

2. **Term.**

(a) **Primary Term:** The Primary Term of this Lease shall be for five (5) years, with the effective date beginning on February 17, 2017 (“Effective Date”) and shall terminate at 11:59 p.m. one day before the fifth (5th) anniversary of such date, unless sooner terminated as provided herein. Upon the Effective Date, the Prior Lease Agreement shall terminate.

(b) **Renewal Terms:** Tenant is granted the option to extend the Primary Term of this Lease for three (3) additional five (5) year terms (“Renewal Terms”) on the same terms and conditions set forth herein provided Tenant is not then in default beyond any applicable notice and cure period provided for in this Agreement, of any covenant or term hereunder. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies County, in writing, of Tenant’s intention not to renew this Lease, at least sixty (60) days prior to the expiration of the

Primary Term or any Renewal Term. If Tenant remains in possession of the Lease Premises at the expiration of this Lease or any Renewal Term without a written agreement, Tenant shall become a tenant at will at a rental amount equal to one hundred fifty percent (150%) of the rate in effect at the end of the term of this Lease, and Tenant shall be bound by the terms and conditions of this Lease as far as applicable; but there shall be no renewal of this Lease by operation of law.

3. Rent.

(a) As consideration for this Lease, Tenant shall pay County rent in the amount of Three Thousand and No/100 dollars (\$3,000.00) per month ("Rent") for the first year after the Effective Date and shall pay the amount as adjusted, thereafter, in accordance with subsection 3(b) below. This base amount shall increase each year of the Lease pursuant to subsection 3(b) below. The Rent shall be paid annually, with the first payment of Rent due within sixty (60) days following the date of full execution of the Lease and delivery of a copy of the executed Lease to Tenant, to County at the address specified in the Notices Section below.

(b) During the Primary Term and any Renewal Terms, monthly Rent shall be adjusted, effective on the first anniversary of the Effective Date, and on each such subsequent anniversary thereof. Such monthly Rent shall be increased by three percent (3%) on each anniversary of this Lease for the Primary Term and Renewal Terms of this Lease or by the percentage increase of the most recently published **Consumer Price Index**, whichever is greater. However, if the **Consumer Price Index** is greater, the percentage increase shall not exceed four percent (4%). Subject to the foregoing, the CPI increase shall be calculated by a formula as follows: $\text{New Rent} = (\text{prior Rent}) \times (\text{CPI percentage increase}) + (\text{prior Rent})$; provided that, notwithstanding anything herein to the contrary, in no event will any increase in Rent be greater than four percent (4%) of the Rent for the period immediately preceding the increase in Rent.

"**Consumer Price Index**" will mean the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items (1982-84=100), not seasonally adjusted. In the event the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of New Rent will be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics, or if the Bureau should fail to publish same, then with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by Prentice Hall, Inc., Commerce Clearinghouse or any other nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published and there is no successor thereto, such other index as Landlord and Tenant may agree upon will be substituted for the Consumer Price Index.

(c) County and Tenant hereby expressly agree that the Rent shall be due and payable in advance to the County by Tenant, as of the fifth day of January with the exception of the first payment which is due within sixty (60) days following the date of full execution of the Lease and delivery of a copy of the executed Lease to Tenant. All payments received after the due date shall be considered delinquent. All delinquent payments shall accrue interest on the sixth day of every month at a rate of two percent (2%) per annum on the unpaid balance, payments shall be credited first to accrued interest, then to accrued rental payments, and finally to current rental payments.

4. **Taxes.** Lessee shall be responsible for the payment of any applicable personal property taxes, taxes assessed on Tenant's leasehold improvements and regulatory fees, if applicable associated with the Communications Facilities and Lease Premises.

5. **Tenant's Use.**

(a) **Permitted Use.** The Lease Premises may only be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, alteration, removal or replacement of related Communications Facilities. Notwithstanding anything to the contrary contained herein, County acknowledges that: (i) the State of Georgia has opted into the First Responder Network Authority which is the first nationwide broadband network dedicated for use by police, firefighters, emergency medical services and other first responders ("FirstNet"), and (ii) Tenant has been selected by FirstNet as its sole private partner, to build, operate, maintain and manage the nationwide broadband network on behalf of FirstNet. As such, Tenant may use the Lease Premises for FirstNet purposes, without the same being considered an assignment or subletting or otherwise being in violation of this Agreement.

(b) **User Priority.** Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference or other conflict while this Lease is in effect, and Tenant's use shall be subordinate accordingly:

(1) County;

(2) Public safety agencies, including law enforcement, fire, and ambulance services, that are not a part of the County, including but not limited to FirstNet;

(3) Other governmental agencies where use is not related to public safety, provided such uses existed prior to the date Tenant first occupied the Property; and

(4) Tenant.

6. **Government Approval.** Tenant's right to use the Lease Premises is expressly made contingent upon its obtaining, at its sole expense, all appropriate certificates, licenses, permits, zoning and other approvals that may be required by any local, state or federal authority, copies of which shall be provided to the County.

7. **Interference.**

(a) Tenant's Communications Facilities and operations shall not interfere with the prior existing communications configurations, frequencies or operating equipment lawfully operated by the County, or those lawfully operated by lessees or licensees of the County with rights in the Lease Premises prior in time to the date Tenant first occupied the Property. Such interference shall be deemed a material breach by the Tenant, who shall, upon written notice from the County, be responsible for terminating said interference. In the event any such interference does not cease after the applicable notice and cure period discussed in Section 17(a), Tenant acknowledges that continuing interference may cause irreparable injury and, therefore, the County shall have the

right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

(b) Each party's communications facilities shall comply with all non-interference rules and procedures of the FCC.

(c) Except for any public safety transmissions, the County will not, nor will County permit its employees, agents or independent contractors to interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Such interference shall be deemed a material breach by the County, who shall, upon written notice from the Tenant, be responsible for terminating said interference. If such Interference is caused by a third party deriving their rights from or through County, County shall exercise its rights which shall include sending notice to the third party demanding that the interference cease (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. In the event any interference does not cease after the applicable notice and cure period set forth in Section 17(b), County acknowledges that continuing interference may cause irreparable injury and, therefore, the Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference, except such action shall not be permitted against the County when the interference is caused by the County's public safety transmission, or to terminate this Lease immediately upon written notice.

8. Temporary Interruptions of Service. If County determines that continued operation of the Communications Facilities would: (a) cause or contribute to an immediate threat to public health and/or safety (except for any issues associated with human exposure to radio frequency emissions, which is regulated by the federal government), (b) interrupt the County's public safety radio frequency network, or (c) interfere with the County's public safety operations, County may order Tenant to discontinue its operation. Tenant shall immediately comply with such an order. Service shall be discontinued only for the period that the immediate threat exists. County shall not be liable to Tenant or any other party for any interruption in Tenant's service or interference with Tenant's operation of its Communications Facilities.

9. Relocation. Should the County determine that the Lease Premises is necessary to further a public purpose, and not for commercial or monetary reasons, the County shall provide Tenant with twenty-four (24) months prior written notice that the Communications Facilities must be relocated at Tenant's sole cost. After expiration of the twenty-four (24) month notice period, in lieu of relocation, County and/or Tenant shall have the right to terminate this Lease upon sixty (60) days prior written notice.

10. Tower Specifications. Tenant and County agree that there is an existing, approved communications tower on the Lease Premises with a height of one hundred eighty (180) feet above grade. If the Tenant wishes to build a new communications tower that exceeds one hundred (100) feet above grade, Tenant shall request, in writing, County's approval, which shall be in County's sole and absolute discretion. Tenant shall not commence any work on a new communications tower exceeding one hundred feet in height until Tenant obtains County's written approval of same.

11. Drawings/Photos. Tenant shall provide the County with as-built drawings and photos of the equipment and improvements to be installed on the Lease Premises, which show the actual

location of all Communications Facilities. Said drawings and photos shall be accompanied by a complete and detailed inventory of the Communications Facilities actually placed on the Lease Premises and attached hereto as Exhibit B.

12. Compliance with Law. Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communications Facilities. If the Tenant fails to bring the Communications Facilities into full compliance with all laws and industry standards within sixty (60) days of written notice of violation, Tenant shall remove the Communication Facilities from the premises and forfeit any prepaid rent. County agrees to comply with all Laws relating to County's ownership and use of the property and any improvements on the property.

13. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its sole expense, to erect and maintain on the Lease Premises improvements, personal property and facilities necessary to operate its Communications Facilities in accordance with good engineering practices and all applicable laws and industry standards, including but not limited to, FCC rules and regulations. Tenant shall have the right, at its sole expense, to alter, replace, expand, enhance and upgrade the Communications Facilities at any time during the term of this Lease upon written notice to County. Tenant's installation of all Communications Facilities or any alteration, replacement, expansion, enhancement and/or upgrade to the Communications Facilities shall be done according to plans approved by the County, which approval shall not be unreasonably withheld, delayed or conditioned. Such plans shall state the specifications/dimensions for the equipment to be placed on the tower. All installation, removal, relocation and replacement of equipment shall conform to the Installation Standards attached as Exhibit C and incorporated herein by reference. Actual location of the Communications Facilities on the Lease Premises must be approved by the County prior to actual construction. To obtain County's consent for any matter addressed in this paragraph or elsewhere in this Lease, Tenant shall request, in writing, County's approval and Tenant shall not commence any work until Tenant obtains the Chief Executive Officer's or his designee's written approval of same. Tenant's written request for approval from County shall include the time of commencing the proposed work, a detailed description of the proposed work and the names of all parties that will be involved in the actual work. Notwithstanding the foregoing, all improvements located on the Lease Premises as of the date of this Agreement are deemed approved by County and not subject to the notice and approval provisions of this Agreement and no plans or specifications need to be provided to County. Prior to construction of any additions to the existing Communication Facilities upon the Lease Premises, Tenant shall deliver to County a bond in form and from a surety reasonably acceptable to County guaranteeing the removal of the Communication Facilities as herein provided and the proper restoration of the Lease Premises. Any damage done to the Lease Premises or other County property shall be repaired at Tenant's expense within thirty (30) days after notification of the damage. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Communications Facilities, notwithstanding any provision of statutory or common law, will remain the exclusive personal property of Tenant and shall not become affixed to or a part of the Lease Premises.

(b) Tenant shall, at Tenant's expense, keep and maintain the Communications Facilities now or hereafter located on the Lease Premises in commercially reasonable condition and repair during the term of this Lease, normal wear and tear excepted. Upon termination or expiration of this Lease, the Lease Premises shall be returned to County in good, usable condition, normal wear and tear excepted. In addition, should County place Tenant on notice in writing that the Lease Premises are an eyesore due to graffiti, or accumulated trash, or the lack of any natural screening that is required at the site, then Tenant shall have 30 days to cure such error or be deemed in breach.

(c) Tenant shall install separate meters for utilities used on the Lease Premises by Tenant.

(d) As partial consideration for Rent paid under this Lease, County hereby grants Tenant a License under and across the Lease Premises for ingress, egress, utilities and access to the Lease Premises adequate to install and maintain utilities, including, but not limited to, the installation of power, fiber and telephone service cable, and to service the Lease Premises and the Communications Facilities at all times during the Primary Term of this Lease and any Renewal Term(s) (collectively, the "Licenses"). The location and installation of utility services shall be approved by the County, which approval shall not be unreasonably withheld, delayed or conditioned, prior to the County granting the Licenses in relation to this Lease. The Licenses provided hereunder shall expire upon the termination or expiration of this Lease.

(e) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Lease Premises at all times during the Primary Term of this Lease and any Renewal Term, at no additional charge to Tenant.

14. Replacements. Before Tenant may update or replace the Communications Facilities, Tenant must notify and provide a detailed proposal for any such update or replacement and any other information reasonably requested by the County regarding such requested update or replacement, including but not limited to a structural study, carried out at the Tenant's expense, and must obtain the County's written permission for the update or replacement. Notice must be provided in accordance with Notices Section hereof. The County may not unreasonably withhold approval. Notwithstanding the foregoing no notice or approval shall be required if the replacement equipment is ground based and located within the Lease Premises. Notwithstanding the first sentence of this Section 14, or anything to the contrary contained in this Agreement, for any update or replacement of the Communications Facilities located on the tower, with replacement equipment that is of the same or less weight as existing components that comprise the Communications Facilities, and provided Tenant has delivered to the County a passing structural analysis taking into account Tenant's proposed modifications, then in such instance only, Tenant may proceed with such modifications without the County's prior written permission, but upon notice to the County of the proposed modifications.

15. Maintenance, Improvement Expenses. All modifications to the Lease Premises and all improvements made for the Tenant's benefit shall be at the Tenant's expense and such improvements, including antennae, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the County's facilities on or adjacent to the Lease Premises, and shall be secured by Tenant.

16. Inspection of the Lease Premises. County or its duly authorized representatives may inspect the Lease Premises at any and all times during the term of this Lease for the purpose of determining whether or not Tenant is in compliance with the terms and conditions hereof or for any other purpose incidental to the rights of the County, provided such inspection occurs with a representative of Tenant present. The County or its representatives shall be provided access upon no more than twenty-four (24) hours' notice to Tenant. The Tenant hereby designates its Network Operations Center ("NOC") at (800)-638 2822 as its agent for purposes of notification under this Section.

17. Termination.

(a) Termination by County. The County shall have the right to terminate this Lease upon sixty (60) days written notice to Tenant upon the occurrence of any of the following events:

(i) upon any event of Tenant's default under the terms and conditions and through the procedures of this Lease;

(ii) if, under relevant building, structural or engineering codes or standards applicable to the Communications Facilities, the Communications Facilities are structurally unsound (provided, however, that this Agreement shall not terminate if Tenant repairs, refurbishes or otherwise remedies the Communications Facilities within sixty (60) days after receipt of written notice from County so that the structurally unsound condition no longer exists);

(iii) in the event of abandonment.

(b) Termination by Tenant. The Tenant shall have the right to terminate this Lease upon sixty (60) days prior written notice to County upon the occurrence of any of the following events:

(i) upon any unacceptable results of any tests prior to Tenant's installation of the Communications Facilities on the Lease Premises, such test results must be provided to the County;

(ii) if Tenant does not obtain through no fault of its own any license (including, without limitation, an FCC license), permit or any governmental approval necessary to the installation and/or operation of the Communications Facilities or Tenant's business;

(iii) if the Lease Premises or the Communications Facilities are destroyed or damaged (so long as the damage is not caused by Tenant) so as, in Tenant's reasonable judgment, substantially and adversely affect the effective use of the Communications Facilities. In such event, all rights and obligations of the parties shall cease as of the date of notification, and Tenant shall surrender the Lease Premises returned to the County in the condition required by Section 20, Property Removal within sixty (60) days. The County shall not be liable to Lessee for any indirect or consequential damages including but not limited to, inconvenience, annoyance, loss of profits, nor for any expenses, or any other damage resulting from the repair of such damage, or from any repair, modification,

arranging or rearranging of any portion of the Lease Premises or Communications Facilities or for termination of this Lease.

(c) Notice of either party's exercise of its right to terminate under this Section or under any other provision hereof shall be given in writing in accordance with this Section and the Notices Section hereof.

(d) If Tenant terminates the Lease subject to 18(b)(i) above prior to the Lease's natural expiration, Tenant will be assessed an early termination fee in an amount equal to six (6) month's rent.

(e) Tenant will, within one hundred and eighty (180) days of receipt of notice of termination from the County, discontinue all radio transmissions and reception from the site and remove the Communications Facilities. Should Tenant fail to discontinue all radio transmissions and reception from the site, and remove the Communications Facilities, Tenant shall pay County Rent at double the monthly rate at the time of the termination. Such fee shall continue until the Communications Facilities are removed and the Lease Premises is restored to substantially the same above-grade condition in which the Lease Premises was prior to its use by the Tenant, normal wear and tear excepted.

18. Default and Right to Cure.

(a) Each of the following events shall constitute a default of this Lease by Tenant, provided however, that Tenant shall have thirty (30) days, after receipt of written notice from the County of any such event of default by Tenant to cure.

(i) Tenant's failure to pay any Rent or other sums due under this Lease on the date such Rent or other sums are due;

(ii) Tenant's failure to keep, perform or comply with any covenant, term or condition hereof;

(iii) Tenant's failure to pay any taxes or fees owed to the County. The County finds that while taxes are not a part of this Agreement, the County will not conduct business with any entity that fails to respect the jurisdiction of the local government. If the nature of any default by Tenant under this Section 18 is such that it is not capable of being cured within the thirty (30) day period provided above, this Lease may not be terminated so long as the Tenant commences appropriate curative action within such period and thereafter diligently pursues such a cure to completion as promptly as possible, but in no event beyond seventy-five (75) days after receipt of such notice.

(iv) Tenant's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of the Tenant's assets for the benefit of Tenant's creditors or the institution of proceedings in bankruptcy against the Tenant or the appointment of a receiver of the assets of the Tenant, provided however, that if any such proceedings or appointments are involuntary, then it shall not be considered a default by the Tenant unless Tenant fails

to procure a dismissal thereof within sixty (60) days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

(b) Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, the County shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to the Notices Section hereof, to take effect immediately, if Tenant fails to perform any covenant or commits a material breach of this Lease and fails to diligently pursue a cure thereof to its completion after thirty (30) days written notice specifying such failure of performance or default. County may remove, at Tenant's expense, the Communications Facilities from the Lease Premises, without prejudice to any other remedy which the County might be entitled to pursue.

(c) If County terminates this Lease because of Tenant's default, then Tenant shall be liable to County for liquidated damages, not as a penalty, in the amount of accrued and unpaid Rent owing at the time of such termination, plus the present value of the remaining Rent that would have been payable hereunder through the then remaining balance of the Primary Term or the then remaining balance of any exercised Renewal Term. Tenant's liability for liquidated damages as expressly described above shall survive any such termination.

19. **Payment During Default.** The receipt of any sums paid by Tenant to the County after a default of this Lease shall not be deemed a waiver of such default unless expressly set forth in writing by the County.

20. **Property Removal.** Upon termination of this Agreement, Tenant shall remove its Communications Facilities from the Lease Premises within one hundred and eighty (180) days after the date of termination. Tenant shall restore the Lease Premises to substantially the same above grade condition in which the Lease Premises was prior to its use by the Tenant, normal wear and tear excepted, all at Tenant's sole cost and expense. Any parts of the Communications Facilities which are not removed, including those below grade, by the end of said one hundred and eighty (180)-day period shall, at the County's option, become the property of the County, and Tenant shall have no further rights or obligations with respect thereto. In the event that County does not exercise such option and Tenant fails timely to remove the above grade Communications Facilities, County may remove the above grade Communications Facilities at the expense of Tenant. Notwithstanding the foregoing, any delays beyond the one hundred and eighty (180)-day removal period that were caused by events or circumstances beyond the reasonable control of Tenant shall extend the one hundred and eighty (180)-day removal period for a period of time to be agreed to by County and Tenant.

21. **Abandonment.** Tenant shall not vacate or abandon the Lease Premises at any time during the term hereof. If the Tenant vacates or abandons the Lease Premises, this Lease shall be terminated as provided in Section 18. Tenant shall have the duty to remove such abandoned Communications Facilities in a manner required by Section 20 above. If the abandoned Communications Facilities are not removed, the County may pursue all legal remedies available to it to insure that the Communications Facilities are removed and reimbursement of the expense is obtained.

22. **Condemnation of Lease Premises.**

(a) **Termination of Lease.** If the whole or any part of the Lease Premises shall be taken by any public authority under the power of eminent domain or any like power (or by deed in lieu thereof) such that Tenant reasonably determines that the Lease Premises cannot continue to be operated, at reasonable cost, for its then current use, then Tenant may terminate this Lease by written notice given to the County within sixty (60) days after the date possession of the portion of the Lease Premises taken shall be required to be delivered to the appropriate authority. However, such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either the County or Tenant to recover just and adequate compensation from the condemning authority.

(b) **Continuation of Lease.** If the taking of any portion of the Lease Premises does not result in the termination of this Lease under Subsection (a) above, this Lease shall continue in full force and effect as to the remainder of the Lease Premises, and the condemnation award will be disbursed in accordance with Subsection(c) below and used to make all necessary restorations, repairs and alterations to the Tenant's Communications Facilities remaining on the Lease Premises.

(c) **Apportionment of Award.** The County and Tenant agree to cooperate in applying for and prosecuting any claim against the condemning authority for the taking of the Lease Premises. If this Lease is terminated as herein provided, the aggregate net award, after deducting all reasonable expenses and costs, including attorneys' fees reasonably incurred in connection therewith, shall be distributed as follows: Tenant shall be entitled to the portion of such award representing the fair market value of its leasehold estate in the Lease Premises, the value of any portion of the Communications Facilities so taken, and all expenses incurred by Tenant in moving from and vacating the Lease Premises. The County shall be entitled to the portion of such award representing such County's interest in the fair market value of the premises so taken. In the event of a taking which does not result in the termination of this Lease, the aggregate net award, after payment of all expenses and costs, including attorneys' fees reasonably incurred in connection therewith, shall be distributed as follows: Tenant shall be entitled to the portion of such award necessary to reimburse Tenant for the reasonable expenses and costs actually incurred in temporarily vacating the Lease Premises and in the restoration, repair or alteration of the Tenant's Communications Facilities remaining on the Lease Premises and the County shall be entitled to the remainder of such award.

23. Insurance Requirements. The Tenant shall furnish the following along with required Bonds prior to the Effective Date of this Lease:

(a) **General Liability.** The Tenant must maintain an occurrence form commercial general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage -- broad form, and personal injury, for the hazards of premises/operation, broad form contractual liability coverage, independent contractors, and products/completed operations.

The Tenant must maintain aforementioned commercial general liability coverage with limits of liability of \$1,000,000 per occurrence and in the aggregate; this limit may be satisfied by the commercial general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy are no less than the underlying commercial general liability coverages.

(b) Automobile Liability. The Tenant must carry automobile liability coverage. Coverage shall afford total liability limits for bodily injury liability and property damage liability in the amount of \$1,000,000 combined single limit. The liability limits may be afforded under the commercial policy, or in combination with an umbrella or excess liability policy provided coverage afforded by the umbrella excess policy are no less than the underlying commercial auto liability coverage.

Coverage shall be provided for bodily injury and property damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles.

The commercial automobile policy shall include at least statutory personal injury protection.

(c) Workers Compensation. The Tenant shall, without expense to the County, provide statutory workers compensation insurance. The Tenant may carry statutory workers compensation insurance on subcontractors or require all subcontractors likewise to carry such insurance.

(d) Certificates of Insurance must be executed in accordance with the following provisions:

(i) Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Lease;

(ii) Certificates to contain the location and operations to which the insurance applies;

(iii) Certificates are to be issued to:

(iv) DeKalb County, Georgia

Director of Purchasing & Contracting
The Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030.

(e) The Tenant shall be wholly responsible for securing certificates of insurance coverage as set forth above from all subcontractors who are engaged in work associated with this lease.

(f) Insurance shall be written by a company eligible to do business in the State of Georgia and rated at least A- by AM Best.

(g) The parties hereby confirm that the provisions of this Section shall survive the expiration or termination of this Lease.

(h) Tenant shall not be responsible to County, 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 Lease Premises.

(i) DeKalb County, GA shall be included as an Additional Insured on required liability coverage. Landlord's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and, (iii) not exceed Tenant's indemnification obligation under this Agreement, if any.

(j) Notwithstanding the forgoing, Tenant may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Tenant elects to self-insure its obligation under this Agreement to include Landlord as an additional insured, the following conditions apply: (i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and (iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

24. Notices. All notices, statements, demands, requests, consents, approvals, or authorizations, hereunder given by either party to the other shall be in writing and sent by registered or certified mail, postage prepaid, or by commercial overnight courier, by hand delivery by reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, (i) at the time on which the same is hand-delivered, in person or by courier service or by an overnight delivery service or (ii) the date of receipt of the notice by the addressee thereof, as evidenced by the return receipt, in accordance with this Section. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party may from time to time and at any time change its address or add an address for notices hereunder.

If to Tenant, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: GA3553
Cell Site Name: DEKALB FIRE STATION
24 (GA)
Fixed Asset No.: 10022532
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department – Network
Operations
Re: Cell Site #: GA3553
Cell Site Name: DEKALB FIRE STATION
24 (GA)
Fixed Asset No.: 10022532
208 S. Akard Street
Dallas, Texas 75202-4206

If to County, to:

DeKalb County, Georgia
Chief Executive Officer
Maloof Administration Building
1300 Commerce Drive
Sixth Floor
Decatur, Georgia 30030

With a copy to:

Facilities Management Department
Real Estate Administrator
1300 Commerce Drive, Suite 300
Decatur, GA 30030

With a copy to:

County Attorney
DeKalb County Law Department
1300 Commerce Drive
Decatur, Georgia 30030

Send Rent payments to:

DeKalb County
Finance Department
1300 Commerce Drive
Decatur, GA 30030

25. Environmental Laws.

For purposes of this Agreement, the term “Hazardous Substances” means:

- (i) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and

Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq. all as amended or any other applicable federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect;

(ii) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles or generators; and

(iii) asbestos.

(b) County makes no warranty or representation whatsoever concerning the Lease Premises, including without limitation, the condition, fitness or utility for any purpose thereof, of any improvements thereto with applicable laws, ordinances or governmental regulations. Tenant's right to use the Lease Premises is strictly on an "as is" basis with all faults, existing as of the Effective Date.

(c) County hereby disclaims all warranties whatsoever, express or implied, the condition of the soil (or water), geology, and any warranty of merchantability or habitability or fitness for a particular purpose.

(d) Except as otherwise specifically permitted under the terms of this Agreement, Tenant shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within the Lease Premises in violation of any applicable federal, state, or local law, rule, regulation, order, decree or other requirement listed above in this Section.

(e) Storage batteries for emergency power, fuel for temporary generators during power outages, and ordinary paints, solvents and similar substances commonly used in small quantities and necessary for maintenance of the Communications Facilities are excepted from the preceding prohibition of use by Tenant of Hazardous Substances on the Lease Premises and the Property, so long as Tenant complies with all applicable federal, state and local laws rules and regulations governing the use of such items.

(f) No permanent underground or above ground storage tanks shall be installed on Premises.

(g) As addressed in greater detail in Section 16, County or its officers, employees, contractors, or agents shall at all times have the right to enter and inspect the Lease Premises and the operations conducted thereon to assure compliance with the requirements herein stated.

(h) Each Party shall, promptly after the discovery of the presence of, or believed presence of, a Hazardous Substance within the Lease Premises give written notice to the other Party in the event that the notifying Party knows or has reasonable cause to believe that any release of Hazardous Substance has come or will come to be located on, under, about or within Lease Premises. The failure to disclose in a timely manner the release of a Hazardous Substance,

including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law shall be a breach of this Agreement.

(i) Tenant shall immediately clean up and completely remove any release of Hazardous Substances to the extent released by Tenant on, under, about or within Lease Premises, in a manner that is in all respects safe and in accordance with all applicable laws, rules and regulations. County shall immediately clean up and completely remove any release of Hazardous Substances to the extent released by County on, under, about or within Lease Premises, in a manner that is in all respects safe and in accordance with all applicable laws, rules and regulations.

(j) In the event Hazardous Substances used in violation of applicable laws are discovered, the discovering Party shall disclose to the other Party the specific information regarding the discovering Party's discovery of any Hazardous Substances in violation of applicable laws placed on, under, about or within Lease Premises.

(k) Breach of any of these covenants, terms, and conditions, and the breaching Party's subsequent failure to cure within thirty (30) days after receipt of written notice from the non-breaching Party (provided the breaching Party shall have such extended period beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion), shall give the non-breaching Party the authority to either terminate this Agreement. In either case, the breaching Party will continue to be liable under this Agreement to remove and mitigate all Hazardous Substances to the extent placed by the breaching Party on, under, about or within the Lease Premises or the Property in violation of applicable laws. Subject to the removal period set forth in Section 20, upon termination of this Agreement, Tenant shall, in accordance with all applicable laws, remove from the Lease Premises any equipment or improvements to the extent placed on Lease Premises by Tenant that may be contaminated by Hazardous Substances.

(l) Tenant shall defend, indemnify and hold County and its officials, officers, employees, contractors and agents free and harmless from any and all claims, liability, injury, damage, costs, or expenses (including, without limitation, the cost of reasonable attorney's fees) arising as a result of the presence of use of any Hazardous Substances placed or caused to be placed by Tenant or its partners, affiliates, agents, officials, officers, contractors or employees on the Lease Premises. County shall defend, indemnify and hold Tenant and its officials, officers, employees, contractors and agents free and harmless from any and all claims, liability, injury, damage, costs, or expenses (including, without limitation, the cost of reasonable attorney's fees) arising as a result of the presence or use of any Hazardous Substances placed or caused to be placed by County or its partners, affiliates, agents, officials, officers, contractors or employees on the Lease Premises or the Property. The foregoing indemnity is intended to operate as an agreement pursuant to, among other requirements, Section 107, subdivision (e) of CERCLA, 42 United States Code Section 9607, subdivision (e), to insure, protect, hold harmless and indemnify each Party from any liability created by the other Party pursuant to such sections.

(m) The terms of this Section 25 shall survive the expiration or earlier termination of this Agreement.

26. **Right to Encumber.** With written notice to the County, Tenant shall have the right during the Term (subject to the other terms hereof) to place one or more mortgages, deeds to secure debt or similar security interests, on all or any portion of Tenant's leasehold interest in the Lease Premises; provided, however, Tenant shall have no right whatsoever to encumber the County's fee interest in the Lease Premises or to otherwise obligate County in relation to any such debt and such security instruments shall encumber only Tenant's rights under this Lease and the leasehold estate created hereby. Any foreclosure or other exercise of remedies by any such holder of a leasehold security interest or a third party purchaser thereof shall, in all events, be subject to all of the terms of this Lease, specifically including the use restrictions.

27. **Indemnification.** Tenant shall at all times exonerate, indemnify, and hold harmless the County and all its officers, agents, servants, or employees from and against all claims and actions, and all expenses incidental to the defense of such claims, litigation, and actions, based upon or arising out of any damage, loss or injury, including death, of any kind or nature whatsoever to persons or property, including employees and property of the County (1) caused by or resulting from any error or omission of the Tenant, or the negligent act of his subcontractors or any agents, servants, or employees arising under this Lease, or (2) sustained on the Lease Premises in connection with the performance of this Lease or conditions created thereby. Tenant shall assume and pay for, without cost to the County, the defense of any and all claims, litigation, and actions suffered through any act or omission of the Tenant, or anyone directly or indirectly employed by or under the supervision of the Tenant, or in any way arising out of the Lease Premises by the Tenant. Tenant expressly agrees to defend against any claims brought or actions filed against the County where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

28. **Assignment.** In addition to Tenant's rights as provided for in Section 5(a), Tenant will have the right to assign, sell or transfer its interest under this Agreement, in whole or part, without County's consent, to: (a) Tenant's Affiliate, (b) to any entity with a net worth of at least One Hundred Million Dollars (\$100,000,000) or (c) any entity that acquires all or substantially all of the Tenant's assets in the market as defined by the Federal Communications Commission in which the Property is located. Upon notification to County of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant may not otherwise assign, or otherwise transfer any or all of Tenant's interest in this Lease without County's written consent, which consent shall not to be unreasonably withheld, conditioned or delayed. Such consent shall be requested one hundred twenty (120) days in advance of the anticipated assignment or transfer and shall include such information as the County, in its reasonable judgment, may deem essential. Any said assignee or subtenant of this Lease shall be bound by the terms of this Lease. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

29. **Memorandum of Lease.** The County and the Tenant agree to execute a short form memorandum of this Lease in such form as will permit the recording thereof in the appropriate public real estate records and which shall recite the Effective Date, the expiration date of the

Primary Term, the Renewal Terms, the property that is subject to this Lease and such other information as may be reasonably required. The Memorandum of Lease may be recorded at Tenant's expense.

30. **Successors and Assigns.** This Lease and the Licenses granted herein shall be binding upon and inure to the benefit of the respective parties, their respective successors, personal representatives and assigns.

31. **Bankruptcy.** In the event that bankruptcy or state insolvency or receivership proceedings shall be filed and sustained for a period of greater than ninety (90) days against Tenant, its heirs, executors, administrators, successors or assigns, in any Federal or State Court, it shall give the right to the County, at its option, to immediately declare this Lease null and void, and to at once resume possession of the Lease Premises. The County may exercise its right to have Tenant dismantle and remove its Communications Facilities or take possession thereof. By executing this Lease, Tenant acknowledges that failure to dismantle and remove the Communications Facilities will impair the interest of the County. No Receiver, Trustee or other judicial officer shall ever have any right, title or interest in or to the Lease Premises by virtue of this Lease.

32. **Broker Fees.** Either Party hereto that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and shall indemnify and hold the other Party harmless from and against any claim to a fee, commission or other compensation asserted by such Representative, including reasonable attorneys' fees and costs incurred in defending such claim.

33. **Mortgage Subordination.** This Agreement is and shall be subject and subordinate to all ground or underlying leases of the entire Property and to all mortgages, deeds of trust and similar security documents which may be secured upon the Property as of the Effective Date, and to all renewals, modifications, consolidations, and extensions thereof. At County's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Future Mortgage") by County which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to Tenant being required to subordinate its interest in this Agreement to any Future Mortgage covering the Property, County shall obtain for Tenant's benefit a non-disturbance and attornment agreement for Tenant's benefit in the form reasonably satisfactory to Tenant, which shall recognize Tenant's right to remain in occupancy of and have access to the Lease Premises as long as Tenant is not in default of this Agreement beyond applicable notice and cure periods.

34. **Limitation on Liability.** Anything in this Agreement, either expressed or implied, to the contrary notwithstanding, the Parties acknowledge and agree that each of the covenants, undertakings and agreements herein are made and intended not as personal covenants, undertakings and agreements of the Parties, or for the purpose of binding the Parties personally or the assets of the Parties, except the Parties' interest in the Premises and the Property and all rent, insurance and condemnation proceeds derived therefrom.

35. **RF Signage and Notices.** Tenant shall install signs alerting the public, but especially workers and public safety officials of any radio frequency emissions or other safety issues. These

signs shall comply with OSHA 1910.145 and OSHA CFR 1926.200. In addition, Tenant and any permitted Subtenant are referred to two recent FCC and OSHA enforcements orders for guidance on signage.

(See: <http://www.fcc.gov/eb/Orders/2007/DA-07-549A1.html> and <http://www.fcc.gov/eb/Orders/2007/DA-07-2138A1.html>).

36. **Amendments.** The provisions of this Agreement may be amended only by mutual written consent of the Parties.

37. **No Relocation Assistance.** Tenant acknowledges that Tenant is not entitled to relocation assistance, or any other benefits under the Uniform Relocation Assistance Act, or any other applicable provision of law upon termination of this Agreement.

38. **Time of the Essence.** Time is and shall be of the essence in this Lease.

39. **Georgia Laws Govern.** This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

40. **Venue.** This Lease shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action arising out of this Lease shall be brought in the courts of DeKalb County, Georgia. All parties hereto subject themselves to in personam and in rem jurisdiction of the Court and waive all challenges they may have as to venue or forum non-convenience.

41. **No Assurances.** Execution of this Lease is completely unrelated to any and all DeKalb County planning process(es) and all other required County licenses, permits, authorizations, and approvals whatsoever. Grant of this Lease does not assure Tenant that it will be successful, in whole or in part, in securing any or all required DeKalb County permits, or any other required permits or authorizations. Tenant is solely responsible, at its sole expense, for securing any and all required governmental authorizations to construct and to operate the Communications Facilities which shall be reviewed pursuant to prevailing DeKalb County requirements at that time.

42. **Waivers.** No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Lease shall operate as a waiver of any rights hereunder, nor shall any waiver of any prior default operate as a waiver of any subsequent default; and no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated. No provision of this Lease shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease.

43. **Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall

not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

44. Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed hereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto.

45. Headings, Captions and References. The Section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires.

46. Merger and Integration. This Lease and the documents attached hereto contain the entire agreement of the Parties with respect to the subject matter of this Lease, and supersede all prior negotiations, agreements and understandings with respect thereto. No representations, oral or written, not incorporated herein shall be binding upon the Parties. This Lease shall not be modified or amended in any respect except by written instrument signed by both Parties. No amendment or modifications of this Lease shall be enforceable unless approved by appropriate action of the County's governing authority.

47. Survival. In addition to those Sections that specifically provide for survival, terms, conditions, obligations, and indemnifications of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed in three counterparts, each to be considered an original by their authorized representative, on this _____ day of _____, 2018.

NEW CINGULAR WIRELESS PCS, LLC
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

By: _____ (SEAL)
Title: _____

ATTEST:

Barbara H. Sanders
Clerk to the Chief Executive Officer and
Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO FORM:

County Attorney Signature

County Attorney Name
(Typed or Printed)

Exhibit A

Lease Premises Legal Description and Drawing

Exhibit B

Depiction of Tower & Facilities

EXHIBIT "C"

SITE TECHNICAL STANDARDS

I. General

All users shall furnish the following to County prior to installation of any equipment.

- Site application/facilities data sheet.
- Copies of FCC licenses/construction permits.
- Accurate block diagrams showing operating frequencies, all system components (active or passive) with gains and losses in dB, along with power levels.
- Copies of manufacturer's equipment specifications.
- The following will not be permitted without the written consent of County, which consent shall not be unreasonably withheld:
 - Equipment which does not conform to FCC Rules and Regulations.
 - Any equipment without FCC type acceptance.
 - Non-continuous duty rated transmitters used in continuous duty applications.
 - Equipment not designed for high-density site applications.
 - Nickel plated connectors.
 - Add-on power amplifiers.
 - Digital/analog hybriding in exciters, unless type-accepted.
 - Transmitter outputs without a harmonic filter and antenna matching circuitry.
 - Ferrite devices or semiconductors looking directly at an antenna.
 - Active or passive devices hidden in inconspicuous locations.
 - Cascaded receiver multicouplers/preamps.
 - Hybrid equipment with different manufacturers' RF designated markings.
 - Equipment with crystal oscillator modules which have not been temperature compensated.
 - Open rack mounted receivers and transmitters.
- Tenant may change its operating frequencies by providing written notice to County. Notwithstanding any such change in use of frequencies, Tenant must not cause interference to pre-existing radio frequency users on the Property in violation of this Agreement.

II. Radio Frequency Interference Protective Devices

In general, the following minimum specifications will apply: 30-88 MHz

- Isolators - minimum 60 dB.
- TX output cavity - minimum of 20 dB rejection at ± 1 MHz
- High power type, continuous duty for all paging transmitters 130-174 MHz
- Dual Stage Isolators - minimum of 60 dB insertion loss allowable.
- TX Cavity - minimum of 25 dB rejection at ± 1 MHz. 406-512 MHz
- Dual Stage Isolators - minimum of 60 dB insertion loss allowable.
- TX Cavity - minimum of 25 dB rejection at ± 1 MHz. 806-960 MHz
- Dual Stage Isolators - minimum of 60 dB insertion loss allowable.
- TX Cavity - minimum of 20 dB rejection at ± 5 MHz.

Other frequency ranges as agreed upon by the Parties .

It should be emphasized that the above specifications are minimum requirements. Additional protective devices may be required based upon evaluation of the following information:

- Theoretical transmitter mixes, especially second and third order products
- Antenna location and type
- Combiner/multicoupler configurations
- Transmitter specifications
- Receiver specifications
- Historical problems
- Transmitter to transmitter(s) or receivers(s) isolation
- Calculated and measured level of intermod products
- Transmitter output power and ERP
- Spectrum analyzer measurements
- VSWR measurements
- Existing cavity selectivity
- Antenna to antenna proximity

III. All Antennas And Mounts Must Be:

- Mounted only on approved side arms or posts or other specified mounts and only one per mount unless authorized by County.
- All mounting hardware galvanized or non-corroding metal.
- Tagged with weatherproof labels showing manufacturer, model, frequency range, and owner.
- Bonded with copper braid to building ground system, when available.
- Connections to be taped with stretch vinyl tape (Scotch #33 or equivalent) and Scotchkoted (including booted pigtails).
- Must meet manufacturer's VSWR specifications.
- Antennas or hardware with corroded elements must be repaired or replaced.
- Must be DC grounded type, or have the appropriate lightning protection as determined by County.
- Unless otherwise authorized by County, all antennas must be encased in fiberglass radomes and be painted or impregnated with a color designated by County as the standard antenna color for aesthetic uniformity.

IV. Antenna Mounts

- 2" or greater heavy wall galvanized mounting pipes must be used.
- No welding or drilling on mounts will be permitted.
- Any corroding hardware must be replaced.

V. Cable

- All antenna transmission lines shall be grounded at the antenna, at the entry point to the equipment room, and in the equipment room, with the appropriate grounding kits.
- All antenna lines to be jacketed Heliax (or equivalent), 1/2" or greater.
- All transmission lines must be clamped with stainless steel clamps made specifically for this purpose (not wraplock) to the wave guide bridge for the full external run of the line.
- Where no troughs or cable trays exist, all cable must be tied and bundled at not less than 2' intervals.
- No kinked or cracked cable.
- Any cable fasteners exposed to weather must be nylon ultraviolet resistant type or stainless steel.

- All cable must be run in troughs or cable trays where provided or indicated.
- All unused lines must be tagged at both ends showing termination points.
- All transmit interconnecting cables/jumpers must be solid copper outer conductor (½” or superflex or equivalent), and not exceed 16’ in length.
- All receiver intercabling must be 100% double shielded coax.
- All AC power cords must be 3 conductor with grounding plugs.
- The use of extension cords will not be allowed.

VI. Connectors

- Must be Teflon insulated, UHF or N type, including all chassis/bulkhead connectors.
- Must be properly fabricated (soldered if applicable) if field installed.
- Must be taped and “Scotchkoted” at least 4” onto jacket if exposed to weather.
- Male pins must be proper length.
- Female contacts may not be spread.
- Connectors must be tightened mechanically and not just “hand tight”.
- Must be silver plated or brass
- Must be electrically and mechanically equivalent to standard OEM connectors.

VII. Receivers

- No RF preamps permitted in front end unless authorized by County.
- All shields must be in place.
- VHF and up must use helical resonator type front ends.
- Must meet manufacturer’s specifications, specifically regarding bandwidth, discriminator, drift width, and spurious responses.
- Crystal filters/preselectors/cavities must be installed in receiver ports and inputs where appropriate.
- All repeater CTCSS circuitry must use “AND” logic and be able to be defeated for testing.

VIII. Transmitters

- Must meet original manufacturer’s specifications.
- All shielding must be in place and secure.

- Must have a visual indication of transmitter operation.
- Must be tagged with Tenant's name, equipment model number, serial number, and operating frequency(ies).
- All low level, pre-driver and driver stages in exciter must be shielded.
- All power amplifiers must be shielded.
- Output power may not exceed FCC RF Emissions guidelines for the site.

IX. Combiners/Multicouplers

- Shall at all times meet manufacturer's specifications.
- Must be tuned using manufacturer approved procedures.
- Must provide a minimum of 60 dB transmitter to transmitter isolation.
- Unused combiner ports must be terminated with the proper length shorted stubs or loads.

X. Cabinets

- All cabinets must be bonded together and grounded to the supplied ground cable.
- All doors must be on and closed.
- All non-original holes larger than 1" must be covered with copper screen or solid metal plates.

XI. Installation Procedures

- Installation may take place only after County has been notified of the date and time, and only during normal working hours unless otherwise specifically authorized.
- Equipment may not be operated until the installation has been approved by County, which approval shall not be unreasonably withheld.
- Equipment must remain within its designated floor space at all times.

XII. Maintenance/Tuning Procedures

- All external indicator lamps must be working.
- Equipment parameters must meet manufacturers' specifications.
- All cover, shield, and rack fasteners must be in place and securely tightened.
- Local speakers must be turned off except during service.

XIII. FCC Licensing

- All FCC licenses must be current
- Must be posted as prescribed by FCC rules, with copies to County.

XIV. Interference Diagnosing Procedures

- All Tenants and Subtenants must cooperate in a timely fashion with County when called upon to investigate a source of interference, whether or not it can be conclusively proven that their equipment is involved.
- County will provide best efforts to assist in locating and curing all interference problems brought to the County by Tenant. If a specific interference problem as brought to County by Tenant is found to be existing in Tenant's equipment, then Tenant will reimburse County for technical assistance at a reasonable market rate, plus any reasonable expenses.

XV. Miscellaneous

- All installations must be maintained in a neat and orderly manner.
- Doors to equipment and antenna spaces shall be closed and locked at all times.
- Access to equipment and antennas shall be by authorized personnel only, and only for purposes of installation, service or maintenance.
- All rubbish related to Tenant's installation and operations must be removed immediately.
- The recitation of Tenant's operating frequencies herein, shall in no event prevent or limit Tenant from using any frequency for which it holds a license or any unlicensed frequency that Tenant has the right to use, provided Tenant does not cause interference in violation of this Agreement.