

**MEMORANDUM**

**To: Mayor and City Council**  
**CC: Eric Linton, City Manager**  
**From: Ben Prickett, Assistant City Attorney**  
**Date: September 29, 2017**  
**Subject: Municipal Pole Attachment Agreement between the City of Dunwoody and New Singular Wireless PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility.**

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This memorandum is an overview of the proposed Municipal Pole Attachment Agreement between the City of Dunwoody and New Singular Wireless PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility.

The Agreement

The proposed agreement between AT&T Mobility and the City of Dunwoody will allow AT&T Mobility to install their micro-antenna system equipment on City owned facilities and in the right-of-way in order to improve the cellular service to Dunwoody area residents. The agreement is based on the City's previous agreements with Crown Castle and Mobilitie, except in this case AT&T Mobility with be installing their own equipment directly, rather than through a third party. Council approval of this agreement does not in any way waive the permitting requirements for microcell antennas. Each proposed microcell antenna must be applied for separately through the City's established process, and each permit request will be reviewed in accordance with the City Code (specifically the Telecommunications towers and antennas ordinance, Section 27-150).

*City of Dunwoody, Georgia*

**MUNICIPAL POLE ATTACHMENT AGREEMENT**

**T** HIS MUNICIPAL POLE ATTACHMENT AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2017 (the "Effective Date"), and entered into by and between the CITY OF DUNWOODY, a Georgia municipal corporation (the "City"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company d/b/a AT&T Mobility.

**RECITALS**

- A. **WHEREAS, AT&T Mobility** owns, constructs, maintains, operates and controls wireless communications Equipment (as defined below), in accordance with licenses issued and regulations promulgated by the Federal Communications Commission ("FCC") and the Georgia Public Service Commission, a fiber based telecommunications Network or Networks (as defined below) serving **AT&T Mobility's** customers and utilizing microcellular Equipment (as defined below) certified by the Federal Communications Commission; and
- B. **WHEREAS,** The City owns, operates and maintains Municipal Facilities (as defined below) in the Public Way (as defined below); and
- C. **WHEREAS,** For the purpose of operating the Network, **AT&T Mobility** wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on Municipal Facilities.

**AGREEMENT**

**NOW, THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and incorporated herein, the parties agree to the following covenants, terms, and conditions:

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this Agreement:

**1.1 City.** ("City") shall mean the City of Dunwoody, Georgia, including all of its operating departments and divisions.

**1.2 AT&T Mobility.** "AT&T Mobility" shall mean New Cingular Wireless PCS, LLC d/b/a AT&T Mobility and its lawful successors, assigns, and transferees.

**1.3 Decorative Streetlight Pole.** "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel, concrete or aluminum streetlight poles.

**1.4 Equipment.** "Equipment" means ~~the optical converters, multiplexers, antennas, fiber optic cables, wires, and related equipment, antenna system equipment including facilities that operate on FCC-~~

approved frequencies in the bands authorized for commercial wireless communications services by the FCC pursuant to FCC licenses issued to AT&T Mobility, whether referred to singly or collectively, to be installed and operated by AT&T Mobility hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as **Exhibit A** and incorporated herein by reference.

**1.5 Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

**1.6 ILEC.** "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

**1.7 Installation Date.** "Installation Date" shall mean the date that the first Equipment is installed by AT&T Mobility pursuant to this Agreement.

**1.8 Laws.** "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Agreement.

**1.9 Municipal Facilities.** "Municipal Facilities" means City-owned structures located within the Public Way, including utility poles, Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electrifiers, Traffic Signal Poles, catenary poles, sign posts, or other City-owned infrastructure and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

**1.10 Network.** "Network," or collectively "Networks," means wireless communications equipment and facilities owned, operated, and maintained by or on behalf of AT&T Mobility ~~one or more of the neutral-host, protocol-agnostic, fiber-based optical networks, which may incorporate third party equipment, operated exclusively by AT&T Mobility~~ to serve its customers in the City.

**1.11 Public Way.** "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, ~~including all public utility easements and public service easements as the same now or may hereafter exist~~, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

**1.12 PSC.** "PSC" means the Georgia Public Service Commission.

**1.13 Services.** "Services" means the commercial wireless communications services ~~RF transport and other telecommunications services~~, provided through the Network by AT&T Mobility to its customers.

**1.14 Streetlight Pole.** "Streetlight Pole" shall mean any pole used primarily for street lighting purposes.

**1.15 Traffic Signal Pole.** "Traffic Signal Pole" shall mean any pole used primarily to support vehicular or pedestrian traffic signalization.

**2 TERM.** This Agreement shall be effective as of the Effective Date and shall extend for a term of five (5) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless AT&T

Mobility notifies the City of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

**3 SCOPE OF AGREEMENT.** Any and all rights expressly granted to A&T Mobility under this Agreement, which shall be exercised at AT&T Mobility sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in AT&T Mobility a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to the reasonable prior review and approval of the City except that it is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or their equivalent under the City's ordinances, codes or laws, shall be required for the installation of AT&T Mobility Equipment installed in the Public Way and/or on Municipal Facilities, unless such a process has been required for the placement of all communications facilities and equipment in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

**3.1 Attachment to Municipal Facilities.** The City hereby authorizes and permits AT&T Mobility to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. AT&T Mobility has the right to draw compatible electricity for the operation of the Equipment from the power source associated with City poles upon approval of a service order application from the applicable utility provider, provided that AT&T Mobility shall not connect its Equipment to, nor draw any power from, any traffic signal device. AT&T Mobility shall be solely responsible for the payment of all electrical utility charges as set forth in paragraph 4.4 below.

**3.2 Abandonment.** If AT&T Mobility abandons Equipment it owns attached to City poles, then, to the extent not inconsistent with applicable law, AT&T Mobility shall remove such Equipment within 90 days. Equipment shall be considered "abandoned" if AT&T Mobility has not used such equipment for its intended purpose for more than 180 consecutive days.

**3.3 Inspection.** AT&T Mobility shall inspect the Equipment to ensure that all attachments are structurally sound and that the equipment is operating properly not less than once per year.

**3.2 Preference for Municipal Facilities.** In any situation where AT&T Mobility has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, AT&T Mobility agrees to attach to the Municipal Facilities, provided that: (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network; and (ii) the rental fee and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to AT&T Mobility of attaching to the alternative third-party-owned property.

**3.3 No Interference.** AT&T Mobility, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electrifiers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement.

**3.4 Compliance with Laws.** AT&T Mobility shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Agreement.

**4 COMPENSATION; UTILITY CHARGES.** AT&T Mobility shall be solely responsible for the payment of all lawful Fees in connection with AT&T Mobility's performance under this Agreement, including those set forth below.

**4.1 Annual Fee.** In order to compensate the City for AT&T Mobility's use of Municipal Facilities, AT&T Mobility shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, upon which Equipment has been installed pursuant to this Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. For the purpose of calculating the Annual Fee remittance, all Equipment attached by AT&T Mobility to one Municipal Facility shall constitute one installation and therefore a single use of a Municipal Facility. The City represents and covenants that the City owns all Municipal Facilities for the use of which it is collecting from AT&T Mobility the Annual Fee pursuant to this § 4.1.

**4.1.1 CPI Adjustment.** Effective commencing on the fifth (5<sup>th</sup>) anniversary of the Installation Date and continuing on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for the South.

**4.2 Accounting Matters.** AT&T Mobility shall keep accurate books of account for the purpose of determining the amounts due to the City under § 4.1 above and shall make records relative to this agreement available for the City to inspect upon thirty (30) days' prior written notice. Such audit of the books shall be at the City's sole expense and only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The City agrees to hold in confidence any non-public information it learns from AT&T Mobility to the fullest extent permitted by Law.

**4.3 Electricity Charges.** For all electrical power obtained from third party providers, AT&T Mobility shall be solely responsible for the payment of all electrical utility charges to the applicable utility provider for the electricity charges attributable to AT&T Mobility.

**5. CONSTRUCTION.** AT&T Mobility shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of AT&T Mobility's Equipment installed in the Public Way and on Municipal Facilities in the City. AT&T Mobility shall not attach, install, maintain, or operate any Equipment in or on the Public Way or on Municipal Facilities without the prior approval of the City for each location. The Application for each of the City's facilities must include drawings and diagrams depicting the location(s) and proposed manner of installation. The City may refuse to allow attachment of Telecommunications Equipment to Municipal Facilities where there is insufficient capacity, or for reasons related to aesthetics, safety, reliability, or generally applicable engineering standards.

**4.1 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, AT&T Mobility shall, if required under applicable City ordinances, apply for the appropriate permits and pay required permit fees, so long as the permit fees and process that the City requests of AT&T Mobility are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). The City agrees to

use reasonable efforts to review and approve AT&T Mobility's applications within thirty (30) days of submission.

**4.2 Location of Equipment.** The proposed locations of AT&T Mobility planned initial installation of Equipment shall be provided to the City prior to deployment of the Equipment. Upon the completion of installation, AT&T Mobility promptly shall furnish to the City a list showing the location(s) of Municipal Facilities to which AT&T Mobility has attached its Equipment in the Public Way and the date of initial installation. Additional installations during the term of this Agreement shall be approved and installed in accordance with this Agreement, and said "pole" list updated upon each installation.

**4.3 Relocation and Displacement of Equipment.** AT&T Mobility understands and acknowledges that the City may require AT&T Mobility to relocate one or more of its Equipment installations. AT&T Mobility shall at the City's direction relocate such Equipment at AT&T Mobility's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other equipment in the Public Way; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford AT&T Mobility a reasonably equivalent alternate location. If AT&T Mobility shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at AT&T Mobility's sole cost and expense, without further notice to AT&T Mobility. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform AT&T Mobility of the displacement or removal of any pole on which any Equipment is located.

**4.4 Relocations at AT&T Mobility's Request.** In the event AT&T Mobility desires to relocate any Equipment from one Municipal Facility to another, AT&T Mobility shall so advise the City. The City will use its best efforts to accommodate AT&T Mobility by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

**4.5 Damage to Public Way.** Whenever the removal or relocation of Equipment is required or permitted under this Agreement, and such removal or relocation shall cause the Public Way or Municipal Facilities to be damaged, AT&T Mobility, at its sole cost and expense, shall promptly repair and return the Public Way and Municipal Facilities in and on which the Equipment is located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If AT&T Mobility does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to AT&T Mobility, to perform or cause to be performed such reasonable and necessary work on behalf of AT&T Mobility and to charge AT&T Mobility for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for payment by the City, AT&T Mobility shall promptly reimburse the City for such costs.

**5 INDEMNIFICATION AND WAIVER.** AT&T Mobility agrees to indemnify, defend, protect, and hold harmless the City, its elected officials, council members, officers, agents and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from AT&T Mobility's activities undertaken pursuant to this Agreement, except to the extent

arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

**5.1 Waiver of Claims.** AT&T Mobility waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

**5.2 Limitation of Liability.** The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors. In no event shall either party be liable for indirect, consequential, or punitive damages.

**6 INSURANCE.** AT&T Mobility shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting AT&T Mobility in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and the Commercial General Liability insurance in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, agents and employees as additional insured's as respects any covered liability arising out of AT&T Mobility's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled without replacement, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. AT&T Mobility shall be responsible for notifying the City of such change or cancellation.

**6.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Agreement, AT&T Mobility shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that AT&T Mobility's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(c) That AT&T Mobility's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

**6.2 Workers' Compensation Insurance.** AT&T Mobility shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

**6.3 Insurer Criteria.** Any insurance provider of AT&T Mobility shall be admitted and authorized to do business in the State of Georgia and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**6.4 Severability of Interest.** Any insurance policy deductibles or self-insured retentions shall be the responsibility of AT&T Mobility. The City shall have no responsibility to pay or reimburse either. Any self-insured retention shall be listed on the certificate of insurance and be subject to approval by the City, which approval shall not be unreasonably withheld. The Commercial General Liability and Automobile Liability policies shall each contain a severability of interest or separation of insured's clause such that the insurance applies to each insured as if they were the only insured and separately to each insured against whom a claim is made, except for insurance policy limits.

**Self-Insurance.** Notwithstanding the foregoing, AT&T Mobility shall have the right to self-insure the coverages required by this Section 6 as long as it or its parent company maintains a net worth of at least \$300,000,000.

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

*if to the City:*

City OF DUNWOODY  
41 Perimeter Center East  
Suite 250  
Dunwoody, GA 30346

*if to AT&T Mobility:*

**NEW CINGULAR WIRELESS PSC LLC D/B/A AT&T MOBILITY**  
ATTN:  
1025 LENOX PARK BLVD NE  
ATLANTA, GA 30319

*With a copy which shall not constitute legal notice to*

**NEW CINGULAR WIRELESS PSC, LLC D/B/A AT&T MOBILITY**  
Attn:  
575 Morosgo Drive NE  
Atlanta, GA 30324

**7.1 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**8 TERMINATION.** With regard to any AT&T Mobility Equipment on any given Municipal Facility, the rights and obligations set forth in This Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party with regard to AT&T Mobility Equipment on the Municipal Facility, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice.

**9 ASSIGNMENT.** Except as provided in Subsection 9.1, This Agreement shall not be assigned by AT&T Mobility without the express written consent of the City. Notwithstanding the foregoing, the transfer of the rights and obligations of AT&T Mobility to a parent, subsidiary, or other affiliate of AT&T Mobility or to any successor in interest or entity acquiring fifty-one percent (51%) or more of AT&T Mobility's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that AT&T Mobility reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of AT&T Mobility immediately prior to the transfer; (ii) any such transferee assumes all of AT&T Mobility's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with AT&T Mobility's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. AT&T Mobility shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why AT&T Mobility believes the Exempted Transfer Criteria have been satisfied. The City shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that AT&T Mobility gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from AT&T Mobility any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives AT&T Mobility notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City fails to act upon AT&T Mobility's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that AT&T Mobility has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

**9.1. Assignment to Affiliate.** Notwithstanding the foregoing: AT&T Mobility may, without the consent of the City, assign this Agreement, upon thirty (30) days' written notice, to any person or entity controlling, controlled by, or under common control with AT&T Mobility (collectively, an "Affiliate").

**9.10 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Agreement.

**9.10.1 Nonexclusive Use.** AT&T Mobility understands that this Agreement does not provide AT&T Mobility with exclusive use of any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices on Municipal Facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

**9.210.2 Waiver of Breach.** 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.

**9.310.3 Severability of Provisions.** If any one or more of the provisions of this Agreement shall be held by 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 not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**9.410.4 Contacting AT&T Mobility.** AT&T Mobility shall be available by phone to the staff employees of any City department having jurisdiction over AT&T Mobility's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network operations center operator at ~~(888)-632-0931~~ 800-638-2822 regarding any such problems.

**9.510.5 Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Georgia. If 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 DeKalb County, Georgia, or in the United States District Court for the Northern District of Georgia.

**9.610.6 Attorneys' Fees.** Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

**9.710.7 Consent Criteria.** 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 delay, condition, or withhold its approval or consent.

**9.810.8 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

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

**9.1010.10 Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. 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.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

*[Signature Page Follows]*

**DOCUMENT DISCLOSURE:**

It is understood and agreed to by AT&T Mobility that this License Agreement and all information submitted by AT&T Mobility to the City in connection with License Agreement's application for this License Agreement and all further information that may be submitted in connection with License Agreement's rights and duties under this License Agreement shall be subject to public disclosure and copying upon request to City Information Systems by any person.

**ATTEST:**

**New Cingular Wireless PCS, LLC  
d/b/a AT&T Mobility**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WITNESS:**

**CITY OF DUNWOODY**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS:

Sign: \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF WITNESS

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

TYPE NAME OF WITNESS

**EXAMINED BY:**

**APPROVED TO FORM:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TITLE

**Exhibits:**

Exhibit A - Equipment

*Exhibit A*