

**NORTH CAROLINA
GUILFORD COUNTY**

GLOBAL ENCROACHMENT AGREEMENT

This Agreement, made and entered into this the 29th day of October, 2018, by and between the **City of Greensboro, ("City")** party of the first part; and **New Cingular Wireless PCS, LLC/AT&T ("AT&T")** party of the second part.

WHEREAS, the City of Greensboro owns certain street rights-of-way located in Greensboro, North Carolina, and AT&T has requested permission to encroach into the City street rights-of-way at locations ("Property") described in the **Small Cell Permit(s)** issued by the City of Greensboro for the purpose of installing small cell wireless infrastructure and generally described below.

WHEREAS, The City of Greensboro has the authority to grant a Global Encroachment Agreement ("Agreement") provided such encroachment will neither cause a public nuisance nor unreasonably interfere with the use of the streets and sidewalks by the public.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

The City grants to AT&T a nonexclusive global encroachment on the Property for:

Installation of Small Cell Wireless Infrastructure

Conditions:

(1) AT&T shall perform any activities at the Property in a manner that minimizes interference with use of the Property and that of adjoining private owners. Before beginning any work, AT&T will provide 72 hours written notice to the City's Engineering and Inspections Department, Utility Coordination, P.O. Box 3136, Greensboro, North Carolina (Tel. 336-373-2424) (Fax. 336-373-2302) (Email: Lee.Lunsford@greensboro-nc.gov). In situations that AT&T determines to be of an emergency nature, AT&T or its contractors shall have immediate access to the Property and shall inform the City by 10am the following day.

(2) AT&T agrees that use of the Property is not intended for any use apart from the business of AT&T.

(3) On conclusion of all activities, AT&T, to the extent practicable and at its sole expense, shall restore the Property to the original condition it was in prior to any activities conducted by AT&T or its contractors. AT&T shall remove any abandoned wireless facility within 180 days of abandonment.

(4) AT&T represents that the encroachment will neither unreasonably cause a public nuisance nor unreasonably interfere with the use of the streets and sidewalks by the public or public utilities, including but not limited to the limitation that any pole or appurtenance shall not cause any problems for pedestrian or vehicular traffic.

(5) AT&T agrees to maintain the encroached upon area in a safe condition and shall pay all costs of maintenance, repair, reconstruction, and general upkeep.

(6) AT&T is responsible for exercising due skill and care in locating any and all utilities (public and private) and structures in the encroachment area and to prevent damage to the same. In advance of any work, AT&T is responsible for using One-Call NC 811.

(7) Before beginning any work, AT&T shall be responsible for all necessary permits and fees, both annual and job specific, and all permits shall be in the name of AT&T. City departments will perform an internal review prior to the final review and approval by the Utility Coordination Section of Engineering & Inspections.

(8) AT&T, at the request of the City and without any cost to the City, shall in a timely manner make any necessary or required maintenance, repair, or design changes if such changes are required as determined by the City in the reasonable exercise of its police power, including but not limited to any public improvement project that may require the removal or relocation of the encroachment.

(9) **Payment of Taxes and Insurance:** AT&T assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of the work referred to in this Agreement.

(10) **Non-Discrimination Requirements:** AT&T, during the construction of the encroachment, for itself, its assignees and successors in interest agrees the contractor, with regard to the work performed by it during the construction and maintenance of the encroachment, shall abide by all local, State, and Federal laws and regulations relevant to **Minority/Women's Business Enterprises and shall not discriminate against any protected group**, including on the grounds of race, color, creed, gender, religion, age, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

(11) **Bond.** AT&T shall furnish a performance bond to City of \$50,000 starting on the effective date of this Agreement and for the life of the Agreement, to guarantee the faithful performance of all AT&T's obligations under the Agreement. On the annual date of this Agreement, AT&T shall send the City an updated verification that the bond remains in effect. AT&T shall have a 15 day grace period after the annual date to come into compliance. All bonding must be arranged in advance of City Council approval of this Agreement.

(12) AT&T shall obtain the following:

- (a) **Worker's Compensation:** Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of \$100,000 for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.
- (b) **Commercial General Liability:** AT&T shall have liability insurance in the amount of \$1,000,000 per occurrence and in the aggregate, combined single limit for bodily injury liability and property damage liability. This shall include coverage for premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and explosion, collapse and underground damage coverage, and a contractual liability coverage. Such insurance will remain in full force and effect during the activities hereby authorized.
- (c) **Business Auto Policy:** Shall have limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles and employee non-ownership.
- (d) **Special Requirements:** The City of Greensboro is to be insured as an additional insured on the required Commercial General Liability policy. AT&T agrees to furnish the City with copies AT&T's Additional Insured Endorsement. City'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 AT&T, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of City, its employees, agents or independent contractors; and, (iii) not exceed AT&T's indemnification obligation under this Agreement, if any.
- (e) It shall be the responsibility of AT&T to require by subcontract that all subcontractors while working hereunder to comply with the same insurance requirements that AT&T is required to meet.

Current, valid insurance policies meeting the above requirements shall be maintained for the duration of the Agreement. Certificates of insurance evidencing the stipulated insurance coverage on an Accord 25 or similar form shall be sent to the City upon execution of this agreement. There shall also be a 30 day notification to the City in the event of cancellation or non renewal of any of the required insurance coverage if not replaced. If AT&T's policies do not provide notice for modification, AT&T shall provide prompt notice to the City in the event of modification to any policy required by this Agreement that would result in AT&T not being able to meet the requirements herein. Failure by AT&T to provide a certificate of insurance to the City shall not relieve AT&T of its responsibilities for maintaining insurance.

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

(13) **Violations:** For violations of material provisions of this Agreement, the City shall provide AT&T with a detailed written notice of any violation upon which it proposes to take action and a ninety (90) day period within which AT&T may demonstrate that a violation does not exist or to cure an alleged violation or, if the violation cannot be corrected in 90 days, to submit a plan satisfactory to the City to correct the violation. If an alleged violation is proven to exist, and no cure or action on a plan acceptable to the City has been received by the City within ninety (90) days the City shall reserve for itself any rights or remedies available including but not limited to revocation of the Agreement or other statutory or judicially imposed penalties as may be available.

(14) **Indemnification and Hold Harmless:** AT&T agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, actions, lawsuits, demands, loss, liability, or expense, including reasonable attorneys' fees, made by anyone for any damage, loss, or injury of any kind, including environmental, that may arise by the negligence or willful misconduct of AT&T or anyone acting through AT&T in connection with this agreement. The foregoing provision will survive the termination or expiration of this Agreement for a period of two (2) years.

(15) **Scope of Agreement:** This Agreement is intended by the parties hereto to be the final expression of their Agreement and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

(16) **Governing Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, which parties agree shall be the sole and exclusive jurisdiction for any suit or cause of action based upon or arising out of this Agreement. The parties further agree that the venue for any suit or cause of action based upon or arising out of the Agreement shall be Guilford County, North Carolina.

(17) **Severability:** If, after the date hereof, any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future law, the remaining provisions of this Agreement shall be fully enforceable.

(18) **E-Verify:** AT&T certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. AT&T also


AT&T



By: Michael Danbom

Title: Area Manager, RAN C&E

(Corporate Seal)

By: 
Witness

CITY OF GREENSBORO

ATTESTED BY:

By: _____
City Manager

By: _____
City Clerk

Recommended:

"This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act".

By: _____
Information Technology Director

By: _____
Deputy Finance Officer

Approved as to Form:

Assistant City Attorney