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**POLLOCK & JAMES, LLP**

ATTORNEYS AT LAW  
ENVIRONMENTAL LAW

August 21, 2020

**Appellate Brief**

City Council  
City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

Re: Appeal of Minor Use Permit #UP2019-030 Zoning Administrator Decision

Our law firm represents a citizen of Newport Beach on who's behalf we are filing this Appeal.

This is an appeal from the decision of the Planning Commission on an appeal of the decision of the Zoning Administrator for the City of Newport Beach, on or about April 16, 2020, approving minor use permit # UP2019-030 for a small cell facility located within the public right of way, on City streetlight number SLC0796, at the northwestern corner of Balboa Blvd. and 30<sup>th</sup> Street (PA2019-111).

**The Issuance of a Permit to "AT&T" is Without Legal Basis**

Newport Beach Municipal Code section 20.49.080 requires a Telecom Company to enter into a Master License Agreement with the City prior to placement of technology hardware onto City property. Only a licensee under such agreement may be permitted, by the Zoning Administrator, to deploy the small cell technology.

Title 20.49.080 states:

Agreement for Use of City-Owned or City-Held Trust Property.  
In applying for a permit pursuant to this chapter, all telecom facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions of the Municipal Code and any applicable provisions of the City Council Policy Manual.

Prior to City approval of a license agreement, the applicant shall obtain a MUP, CUP, LTP or ZC. Upon the issuance of a MUP, CUP, LTP or ZC, as required, and with an approved license agreement, the applicant shall obtain any and all necessary ministerial permits, including encroachment permits for work to be completed in the public right-of-way and building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements. (Ord. 2014-1 §

On or about February 12, 2019, New Cingular Wireless PCS, LLC a Delaware Limited Liability Company, entered into a Master License Agreement with the City of Newport Beach, pursuant to the above municipal code section. (Attached as Exhibit A is page 1 of that Agreement.) The signatory on this Master license Agreement does not list or identify a “dba”.

The Master Lease Agreement requires indemnity by the licensee of the City, and a General Liability Policy of Insurance naming the City as an additional insured. Attached as Exhibit B is a copy of the Statement of Information filed by New Cingular Wireless PCS, LLC, with the California Secretary of State. Exhibit B at Item 5, shows “AT&T Mobility **Corporation**” as the manager of New Cingular Wireless PCS, LLC.

**AT&T Mobility Corporation is Not the Licensee Under the Master License Agreement  
AT&T Mobility Corporation is also Not Registered To Do Business in California**

Exhibit C which is the Statement of Information from the California Secretary of State for an entity registered as AT&T Mobility Wireless Operations Holdings, Inc. AT&T Mobility Wireless Operations Holdings Inc. **may** be registered to do business in California, but it is not the licensee under the Master License Agreement, nor is it the manager of New Cingular Wireless PCS, LLC, which is the licensee.

Furthermore, in response to a Public Records Act request, the City provided the attached Fictitious Business Name registration, filed in Santa Ana (Exhibit D) . This Fictitious Business Name filing is void and a nullity, since it was filed by AT&T Mobility Corporation, which is an out of state corporation, not registered to do business in California.

Accordingly, the applicant and the permit all should be in the name of New Cingular Wireless PCS, LLC. **Not “AT&T”**.

**New Cingular Wireless PCS, LLC Failed to Provide Adequate Proof of Insurance**

The Certificate of Insurance, attached hereto as Exhibit E, was provided in response to a Public

City Council  
City of Newport Beach  
August 21, 2020  
Page 3

Records Act request. It now shows the insured as New Cingular Wireless PCS, LLC (with no dba) and an issue date of 6/01/2020. This was issued after the last planning Commission hearing, in response to our appeal, and did not exist at the time of the hearing. **The prior Certificate of Insurance Checklist is attached as Exhibit E-2.**

Exhibit E, the Certificate of Insurance fails to list any exclusions. Exhibit E-2 , on page 2, lists “v Pollution liability N/A”.

At the time of the Planning Commission hearing, staff assured the Commission that there was no pollution exclusion and that the policy had coverage for EMF caused injury or property damage.

In response to our Public Records Act request **we were** provided with a series of email exchanges between Fauna Shrago , an Administrative analyst for the City and Dan Vozenilek for “AT&T Mobility”. These emails are attached as Exhibit F.

On page F 1, Fauna asks, on behalf of the City Risk Manager, for a copy of the “full /entire policy no. MWZY 31363519 and MWC 31363819.”

On page F 2, Dan Vozenilek responds and states: “ Unfortunately, AT&T is unable to issue a renewal certificate of insurance prior to the renewal date (6/1/2020) .”

He then goes on to say “We did confirm that AT&T is self insured for Pollution Coverage. We do not produce copies of AT&Ts insurance policy because it is confidential and proprietary in nature.” **No policy of insurance was provided.**

On page F3, Fauna again writes to Dan and underscores her prior request by explaining that the information is needed to “rebut” this appeal. She says: “The request to review the policy is due to an appeal from a citizen alleging that certain coverages excluded in the AT&T insurance coverage (sic) . The easiest way to rebut that allegation or understand the best way to respond, would be to review the policy.”

Someone named Cory Autry responds on behalf of AT&T and simply ignores the request for the policy but says: “ Yes, AT&T always self insures for pollution coverage and to evidence it we issue a separate Self-Insurance certificate if needed.” She concludes by simply saying : “We are insured for EMF”.

In response to our Public Records Act request we were provided with a 2 page “AT&T Certificate of Self Insurance”, attached as Exhibit G. This document does not list either Pollution or EMF as covered risk of loss. It simply states: “extended perils-Flood, Earthquake; Business

interruption/loss of Rents; Construction in Progress” and waiver of right to recover.

New Cingular Wireless PCS, LLC has failed to provide adequate proof of insurance for EMF related perils including personal injury or property damage.

### **THE POLICY OF INSURANCE DOES NOT AFFORD FULL COVERAGE**

The permit issued by the Zoning Administrator is to deploy and place an antenna and supporting equipment which will emanate electromagnetic radiation. This carries with it the risk of negligent or unintentional exceedance of federally mandated maximum levels. This risk **must** be insured against.

By reference to the Certificate of Insurance Checklist, Exhibit E-2, on page 2 under Additional Coverages section V, Pollution Liability is marked “N/A”. This means the insurance policy does not carry any pollution insurance. Electro Magnetic Fields (EMF) are listed as a pollutant under the insurance company pollution exclusion of coverage. That means this policy will not cover EMF/RF generated illnesses. Below is exclusion language from General Liability Policies of Zurich, Sun, Hartford and CFC Underwriting for Lloyds.

#### **Updated Zurich Community Care Liability Insurance**

“We will not pay anything under this policy, including claim expenses, in respect of: Electromagnetic fields any liability of whatsoever nature directly or indirectly caused by, in connection with or contributed to by or arising from electromagnetic fields (EMF) or electromagnetic interference (EMI)”

#### **SUN General Insurance**

“This policy does not cover any liability, loss, cost or expense directly or indirectly arising out of, resulting from, caused or contributed to by exposure to magnetic electric or electromagnetic fields or radiation however caused or generated.”

#### **The Hartford, “EXCLUSION – ELECTROMAGNETIC HAZARD”**

“The following exclusion is added: This insurance does not apply to: Electromagnetic Hazard....”

#### **CFC Underwriting LTD in London, the UK agent for Lloyds**

“The Electromagnetic Fields Exclusion (Exclusion 32) is a General Insurance Exclusion and is applied across the market as standard. The purpose of the exclusion is to exclude illnesses caused by continuous exposure to non-ionizing radiation exposure...”

The Certificate of Insurance Checklist, Exhibit E-2, for AT&T shows “N/A” for Pollution Liability under paragraph V. In fact, EMFs are classified as “pollutants” alongside smoke, chemicals, and asbestos. If a company wants insurance for EMF exposure it must purchase additional Pollution Liability Coverage. Proof of such coverage has not been provided to the City by New Cingular Wireless PCS, LLC, the Licensee.

There is, in the public record, no proof of financial responsibility or accounting to establish adequate liquidity of the licensee for the indemnification provisions of paragraph 28 of the Master License Agreement.

### **REMEDIES**

The Council should grant the appeal and revoke the permit issued by the Zoning Administrator and affirmed by the Planning Commission until

- a) Licensee provides Proof of Insurance with the Licensee as a named Insured;
- b) Licensee provides proof of Pollution Liability Coverage for EMF related exposures and illnesses; and
- c) Licensee resubmits its application under the legal name on the Master License Agreement ; New Cingular Wireless, PCS, LLC (not under a nonexistent dba “AT&T”).

Once the above compliance is established, and all three criterion have been provided, then the permit may re-issue, but only in the name of the licensee or in the name of some other entity registered to do business in California which also has signed a Master License Agreement required by Title 3 section 2.49.080 of the Newport Beach Municipal Code.

Respectfully submitted,

POLLOCK & JAMES, LLP



Mark S. Pollock

attachments

C-8584-1

**MASTER LICENSE AGREEMENT BETWEEN THE  
CITY OF NEWPORT BEACH AND NEW CINGULAR WIRELESS PCS, LLC  
FOR THE USE OF CITY-OWNED STREETLIGHTS FOR  
TELECOMMUNICATION FACILITIES**

This MASTER LICENSE AGREEMENT ("Master License") is entered into between the City of Newport Beach, a California municipal corporation and charter city ("City"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee") on this 12<sup>th</sup> day of February, 2019 ("Effective Date"). City and Licensee are each a "Party" and together the "Parties" to this Master License.

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the City Charter;
- B. City is the fee title owner of certain Streetlight(s) located within the Public Right-of-Way in the City of Newport Beach, California;
- C. Licensee desires to license from City, on a non-exclusive basis, the right to attach, install, operate, maintain, and remove certain Telecommunication Facilities on certain City-owned Streetlights located within certain areas of the Public Right-of-Way (collectively, the "License Area");
- D. The Parties anticipate amending this Master License from time-to-time by attaching and incorporating herein the specific License Area(s) to this Master License to include additional City-owned Streetlights to allow for the attachment, installation, operation, maintenance, and removal of additional Telecommunication Facilities as permits are obtained from the City;
- E. Pursuant to the Newport Beach Municipal Code ("NBMC") and City Council Policy L-23, City sought the assistance of an appraiser to determine the maximum or fair market value rent for the License Area; and
- F. City is willing to make the License Area available to Licensee, subject to the covenants and conditions set forth in this Master License on a non-exclusive basis, to facilitate the efficient and orderly deployment of communications facilities in the City of Newport Beach.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS**

1.1 "Amendment" means that document prepared by City in substantially the form attached hereto as Exhibit "A" itemizing the City-owned Streetlight(s) and describing and depicting the License Area(s) on which Licensee is authorized to install a Telecommunication Facility.





**State of California  
Secretary of State**

**Statement of Information**

(Foreign Corporation)

**FEES (Filing and Disclosure): \$25.00.**

If this is an amendment, see instructions.

**IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

F

**G773979**

**FILED**

In the office of the Secretary of State  
of the State of California

**JUL-05 2019**

**1. CORPORATE NAME**

AT&T MOBILITY WIRELESS OPERATIONS HOLDINGS INC.

**2. CALIFORNIA CORPORATE NUMBER**

C3304414

This Space for Filing Use Only

**No Change Statement** (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 13.

**Complete Addresses for the Following** (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE CITY STATE ZIP CODE

1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY CITY STATE ZIP CODE

6. MAILING ADDRESS OF THE CORPORATION, IF DIFFERENT THAN ITEM 4 CITY STATE ZIP CODE

675 W. PEACHTREE ST., N.W. SUITE 2756, ATLANTA, GA 30319

**Names and Complete Addresses of the Following Officers** (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/ ADDRESS CITY STATE ZIP CODE

JAMES LACY 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

8. SECRETARY ADDRESS CITY STATE ZIP CODE

JACKIE A. BEGUE 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

9. CHIEF FINANCIAL OFFICER/ ADDRESS CITY STATE ZIP CODE

CHAD WALKER 1025 LENOX PARK BLVD NE, ATLANTA, GA 30319

**Agent for Service of Process** If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 11 must be left blank.

10. NAME OF AGENT FOR SERVICE OF PROCESS

C T CORPORATION SYSTEM

11. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE

**Type of Business**

12. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

TELECOMMUNICATIONS

13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

07/05/2019

KELLY LETTMANN

POWER OF ATTORNEY

DATE

TYPE/PRINT NAME OF PERSON COMPLETING FORM

TITLE

SIGNATURE

SI-350 (REV 01/2013)

APPROVED BY SECRETARY OF STATE

EXHIBIT "C"





**HUGH NGUYEN**  
**CLERK-RECORDER**  
**12 CIVIC CENTER PLAZA, ROOM 106**  
**POST OFFICE BOX 238**  
**SANTA ANA, CA 92702-0238**

Recorded in Official Records, Orange County  
 Hugh Nguyen, Clerk-Recorder  
 20166459312 23.00  
 11/21/2016 08:58:00  
 323 11 F01  
 23.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

**FICTITIOUS BUSINESS NAME STATEMENT**

**THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS:**

1.	Fictitious Business Name(s) AT&T MOBILITY		(optional) Business Phone No.	
1A	<input type="checkbox"/> New Statement	<input checked="" type="checkbox"/> Raffle - list previous No.	20116286350	<input type="checkbox"/> Change
2.	Street Address, City & State of Principal place of Business (Do not use P.O. box or P.M.B.) 4678 CAMPUS DR., SUITE C NEWPORT BEACH, CA 92660 ORANGE		City	State Zip Code County
3.	Full name of Registered Owner (If Corporation, enter corporation name) NEW CINGULAR WIRELESS PCS, LLC		If Corporation / LLC State of Incorporation or organization DE	
	Res. / Corp. Address (Do NOT use a P.O. Box or P.M.B.) 1025 LENOX PARK BLVD NE		City ATLANTA	State Zip Code GA 30319
4.	(CHECK ONE ONLY) This business is conducted by:			
	<input type="checkbox"/> an individual	<input type="checkbox"/> a general partnership	<input type="checkbox"/> a limited partnership	<input type="checkbox"/> an unincorporated association other than a partnership
	<input type="checkbox"/> a corporation	<input type="checkbox"/> a Limited Liability Partnership	<input type="checkbox"/> co-partners	<input type="checkbox"/> a married couple <input type="checkbox"/> a joint venture <input checked="" type="checkbox"/> Limited Liability Co.
5.	Have you started doing business yet? <input checked="" type="checkbox"/> Yes Insert Date: 01/30/2007 <input type="checkbox"/> No		Notice: This Fictitious Business Name Statement expires five years from the date it was filed in the Office of the County Clerk-Recorder. The statement expires 40 days after any change in the facts is made other than a change in the residence address of the registered owner. A new Fictitious Business Name Statement must be filed before either expiration. When ceasing to transact business under an active Fictitious Business Name Statement, Abandonment shall be filed. The filing of this statement does not of itself authorize the use in this state of a Fictitious Business Name in violation of the rights of another under federal, state or common law (see section 14411 et seq., Business and Professions Code).	
6.	If the registered owner is NOT a corporation, sign below: (See instructions on the reverse side of this form)		If the registered owner is:	
	Signature: _____  _____ (Type or Print Name)  I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).)		a corporation, an officer of the corporation signs below. any type of partnership, the general partner signs below. a limited liability company, a manager or an officer signs below. New Cingular Wireless PCS, LLC _____ Limited Liability Company/Corporation/Partnership Name Jackie Beque, Assistant Secretary of Mgr _____ Signature and Title of Officer/Manager or General Partner I declare that all information in this statement is true and correct. (A registrant who declares as true any material matter pursuant to Section 17913 of the Business and Professions Code that the registrant knows to be false is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000).) <b>AT&amp;T Mobility Corporation, Manager</b> _____ Print Name of Officer/Manager or General Partner	

These fees apply at time of filing (Please provide a self-addressed, stamped, return envelope if mailed):  
 Filing fee \$23.00 for one business name  
 \$7.00 for each additional business name  
 \$7.00 for each additional partner after first two

EXHIBIT "D"



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
06/01/2020

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

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

PRODUCER  <b>Self-Insured Program</b> <b>Producer Information Is Not Applicable</b>	<b>CONTACT NAME:</b> Risk Management																		
	Phone (A/C, No. Ext):	Fax (A/C, No. Ext):																	
INSURED  <b>New Cingular Wireless PCS, LLC</b> <b>One AT&amp;T Plaza</b> <b>208 South Akard</b> <b>Room 1820</b> <b>Dallas, TX 75202</b>	E-MAIL ADDRESS: jh9573@att.com																		
	<table border="1"> <thead> <tr> <th colspan="2">INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A:</td> <td>Self Insured</td> <td>N/A</td> </tr> <tr> <td>INSURER B:</td> <td>Old Republic Insurance Co.</td> <td>24147</td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> </tbody> </table>		INSURERS AFFORDING COVERAGE		NAIC #	INSURER A:	Self Insured	N/A	INSURER B:	Old Republic Insurance Co.	24147	INSURER C:			INSURER D:			INSURER E:	
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INSURER B:	Old Republic Insurance Co.	24147																	
INSURER C:																			
INSURER D:																			
INSURER E:																			

### COVERAGES

Certificate expires one year from above issue date


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

INSR LTR	TYPE OF INSURANCE	ADD'L INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> FOLLOWS ISO FORM CG0001 <input type="checkbox"/> PRIMARY/NON-CONTRIB. APPLIES GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	<input type="checkbox"/>	<input type="checkbox"/>	Self-Insured	Ongoing	Ongoing	EACH OCCURENCE	\$N/A
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$N/A
							MED EXP (Any one person)	\$N/A
							PERSONAL & ADV INJURY	\$N/A
							GENERAL AGGREGATE	\$N/A
							PRODUCTS - COMP OP AGG	\$N/A
								\$N/A
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> FOLLOWS ISO FORM CA 0001	<input type="checkbox"/>	<input type="checkbox"/>	Self-Insured As approved by State	Ongoing	Ongoing	COMBINED SINGLE LIMIT (Each Occurrence)	\$N/A
							BODILY INJURY (Per person)	\$N/A
							BODILY INJURY (Per accident)	\$N/A
							PROPERTY DAMAGE (Per accident)	\$N/A
-	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>	N/A	N/A	N/A	EACH OCCURRENCE	\$N/A
							AGGREGATE	\$N/A
								\$N/A
1)A 2)B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> FOLLOWS NCCI FORM WC 0000000 ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? No (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	<input type="checkbox"/>				<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$N/A
							E.L. DISEASE - EA EMPLOYEE	\$N/A
							E.L. DISEASE - POLICY LIMIT	\$N/A
A	<b>POLLUTION LEGAL LIABILITY/ENVIRONMENTAL REMEDIATION/CLEAN-UP LIABILITY/ENVIRONMENTAL IMPAIRMENT COVERAGE</b> FOLLOWS CHARTIS INSURANCE COMPANY'S POLLUTION LEGAL LIABILITY SELECT POLICY FORM #104827 <input type="checkbox"/> PRIMARY/NON-CONTRIB. APPLIES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Self-Insured	Ongoing	Ongoing	EACH OCCURRENCE	\$1,000,000
							AGGREGATE	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Coverage for self-insurance follows latest version of forms listed above for each coverage. All coverages (including additional insured and waivers of subrogation status) apply based in written contract. "Policy" or "Policies" mean self-insured coverage as if policy existed. Note: Coverages cannot be amended or extended in the below Description area.

Re: City of Newport Beach

<b>CERTIFICATE HOLDER</b>  City of Newport Beach Attn: Lauren Wooding 100 Civic Center Drive Newport Beach, CA 92660	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <span style="float: right;">AT&amp;T Risk Management</span>  

"E"

**CERTIFICATE OF INSURANCE  
CHECKLIST  
City of Newport Beach**

This checklist is comprised of requirements as outlined by the City of Newport Beach. \*

Date Received: 2/15/19 Dept./Contact Received From: Sunny  
 Date Completed: 3/11/19 Sent to: Sunny By: Jan  
 Company/Person required to have certificate: AT&T  
 Type of contract: Other

**I. GENERAL LIABILITY**

- EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19
- A. INSURANCE COMPANY: Old Republic Insurance Company
- B. AM BEST RATING (A- : VII or greater): A+ / XII
- C. ADMITTED Company (Must be California Admitted):  
 Is Company admitted in California?  Yes  No
- D. LIMITS (Must be \$1M or greater): What is limit provided? \$1M/\$10M
- E. ADDITIONAL INSURED ENDORSEMENT - please attach  Yes  No
- F. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? (completed Operations status does not apply to Waste Haulers or Recreation)  Yes  No
- G. ADDITIONAL INSURED FOR PRODUCTS AND COMPLETED OPERATIONS ENDORSEMENT (completed Operations status does not apply to Waste Haulers)  Yes  No
- H. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included?  Yes  No
- I. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included?  Yes  No
- J. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording?  Yes  No
- K. ELECTED SCMAF COVERAGE (RECREATION ONLY):  N/A  Yes  No
- L. NOTICE OF CANCELLATION:  N/A  Yes  No

**II. AUTOMOBILE LIABILITY**

- EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19
- A. INSURANCE COMPANY: Old Republic Insurance Company
- B. AM BEST RATING (A- : VII or greater) A+ / XII
- C. ADMITTED COMPANY (Must be California Admitted):  
 Is Company admitted in California?  Yes  No
- D. LIMITS - If Employees (Must be \$1M min. BI & PD and \$500,000 UM, \$2M min for Waste Haulers): What is limits provided? \$1,000,000
- E. LIMITS Waiver of Auto Insurance / Proof of coverage (if individual) (What is limits provided?) N/A
- F. ADDITIONAL INSURED WORDING:  N/A  Yes  No
- G. PRIMARY & NON-CONTRIBUTORY WORDING:  N/A  Yes  No
- H. HIRED AND NON-OWNED AUTO ONLY:  N/A  Yes  No
- I. NOTICE OF CANCELLATION:  N/A  Yes  No

EXHIBIT "E-2"

III. WORKERS' COMPENSATION

EFFECTIVE/EXPIRATION DATE: 6/1/18 - 6/1/19

- A. INSURANCE COMPANY: Old Republic Insurance Company
- B. AM BEST RATING (A- : VII or greater): A+ / XII
- C. ADMITTED Company (Must be California Admitted):  Yes  No
- D. WORKERS' COMPENSATION LIMIT: Statutory  Yes  No
- E. EMPLOYERS' LIABILITY LIMIT (Must be \$1M or greater) \$1,000,000  Yes  No
- F. WAIVER OF SUBROGATION (To include): Is it included?  Yes  No
- G. SIGNED WORKERS' COMPENSATION EXEMPTION FORM:  N/A  Yes  No
- H. NOTICE OF CANCELLATION:  N/A  Yes  No

ADDITIONAL COVERAGE'S THAT MAYBE REQUIRED  
IV. PROFESSIONAL LIABILITY

V POLLUTION LIABILITY  N/A  Yes  No

VI BUILDERS RISK OR INSTALLATION FLOATER - 2/22/19-3/1/29  N/A  Yes  No  
SELF INSURED  N/A  Yes  No

**HAVE ALL ABOVE REQUIREMENTS BEEN MET?  
IF NO, WHICH ITEMS NEED TO BE COMPLETED?**  Yes  No

Approved:

3/11/19

Agent of Alliant Insurance Services  
Broker of record for the City of Newport Beach

Date

**RISK MANAGEMENT APPROVAL REQUIRED** (Non-admitted carrier rated less than \_\_\_\_;  
Self insured Retention or Deductible greater than \$ \_\_\_\_\_)  N/A  Yes  No

Reason for Risk Management approval/exception/waiver:  
Risk Management approval required for Self Insurance by vendor for Construction in Process exposure.

3/7/19 RM approved self insurance on Builders Risk/Construction in Process exposure.

Approved:

Risk Management

Date

\* Subject to the terms of the contract.

EXHIBIT "E-2"

1452 Edinger, Tustin, Ca. 92780

**From:** Shrago, Fauna <[fshrago@newportbeachca.gov](mailto:fshrago@newportbeachca.gov)>

**Sent:** Friday, May 8, 2020 10:51 AM

**To:** 'att.certrequest@marsh.com' <[att.certrequest@marsh.com](mailto:att.certrequest@marsh.com)>; VOSS, KATELYN <[KV166G@att.com](mailto:KV166G@att.com)>; VOZENILEK, DAN <[dv574p@att.com](mailto:dv574p@att.com)>; 'cory.autrey@wirelesspolicy.com' <[cory.autrey@wirelesspolicy.com](mailto:cory.autrey@wirelesspolicy.com)>

**Cc:** Propertyinsurance <[propertyinsurance@newportbeachca.gov](mailto:propertyinsurance@newportbeachca.gov)>

**Subject:** City of Newport Beach Request for Full Policy, New Cingular Wireless PCS, LLC

Good morning,

The Risk Manager for the City of Newport Beach has requested a copy of the full/entire Policy No. MWZY 31363519 and MWC 31363819, (Customer No. CN103150778). Please provide copies by reply to this email, or by mail to the following address:

City of Newport Beach  
Real Property and Asset Management Program  
Attn: Fauna Shrago, Administrative Analyst  
100 Civic Center Drive  
Newport Beach, CA 92658

Please provide a timeframe when this might be received. Should you have any questions, please contact me at 949-644-3206 or email at [fshrago@newportbeachca.gov](mailto:fshrago@newportbeachca.gov).

Thank you,

FAUNA SHRAGO  
Community Development Department  
Administrative Analyst  
Real Property and Asset Management Program  
[fshrago@newportbeachca.gov](mailto:fshrago@newportbeachca.gov)  
949-644-3206



EX-101 "F-1"

Thank you,

FAUNA SHRAGO  
Community Development Department  
Administrative Analyst  
Real Property and Asset Management Program  
[fshrago@newportbeachca.gov](mailto:fshrago@newportbeachca.gov)  
949-644-3206



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**From:** VOZENILEK, DAN <dv574p@att.com>  
**Sent:** Wednesday, May 13, 2020 10:04 AM  
**To:** Shrago, Fauna <fshrago@newportbeachca.gov>; 'att.certrequest@marsh.com' <att.certrequest@marsh.com>  
**Cc:** Propertyinsurance <propertyinsurance@newportbeachca.gov>; VOSS, KATELYN <KV166G@att.com>; 'cory.autrey@wirelesspolicy.com' <cory.autrey@wirelesspolicy.com>; 'Judy Woolen' <judy\_woolen@sbcglobal.net>; MAIALE, GINA <rv3423@att.com>  
**Subject:** RE: City of Newport Beach Request for Full Policy, New Cingular Wireless PCS, LLC

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Fauna, I left you a VM last Friday. We reached out to our risk management group regarding this issue. Unfortunately AT&T is unable to issue a renewal certificate of insurance prior to the renewal date. AT&T renews every year at the same time, and the current certificate does not expire until June 1st, 2020.

We did confirm that AT&T is Self-Insured for Pollution coverage. We do not produce copies of AT&T's insurance policy because it is confidential and proprietary in nature. If need be we can setup a phone call with Gina Maiale from our Risk Management team to answer any additional questions.

Thank you,

**Dan Vozenilek**  
Senior Technical Project Manager  
Mobile: (562)716-4647  
AT&T Mobility

EXHIBIT "F-2"

kJell ca.

**From:** Cory Autrey  
**To:** Shrago, Fauna; VOZENILEK, DAN  
**Cc:** Propertyinsurance; VOSS, KATELYN; "Judy Woolen"; Wooding, Lauren  
**Subject:** Re: City of Newport Beach Request for Full Policy, New Cingular Wireless PCS, LLC  
**Date:** Friday, May 15, 2020 10:53:21 AM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Fauna – I wanted to provide you additional information we obtained from AT&T's Risk Manager. They state the following:

"Yes, AT&T always self-insures for Pollution coverage, and to evidence it we issue a separate Self-Insured certificate if needed. Pollution coverage consists of claims from third parties against bodily injury and property damage caused by hazardous waste materials released during a company's business operations. We are insured for EMF."

Let me know if this helps as I know we both have a vested interest in making sure we're covered with the correct info for the appeal hearing.

Cory Autrey  
[cory.autrey@wirelesspolicy.com](mailto:cory.autrey@wirelesspolicy.com)  
626-290-3143

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**From:** "Shrago, Fauna" <fshrago@newportbeachca.gov>  
**Date:** Wednesday, May 13, 2020 at 10:09 AM  
**To:** Dan Vozenilek <dv574p@att.com>, "'att.certrequest@marsh.com'" <att.certrequest@marsh.com>  
**Cc:** Propertyinsurance <propertyinsurance@newportbeachca.gov>, Katelyn Voss <KV166G@att.com>, Cory Autrey <cory.autrey@wirelesspolicy.com>, 'Judy Woolen' <judy\_woolen@sbcglobal.net>, "MAIALE, GINA" <rv3423@att.com>  
**Subject:** RE: City of Newport Beach Request for Full Policy, New Cingular Wireless PCS, LLC

Hi Dan,

Thank you for the follow up and further explanation. I returned your call and left a voicemail message yesterday, however, I believe the below information covers the same questions I had to you. The request to review the policy is due to an appeal received from a citizen alleging certain coverages excluded in the AT & T insurance coverages. The easiest way to rebut that allegation or understand the best way to respond, would be to review the actual policy. I understand that it is proprietary and will relay the same to the City's Risk Manager and determine if there are any additional questions we may have.

Thank you for your assistance.

EXHIBIT "F-3"



# Certificate of Property Self Insurance

Attn: AT&T Services Inc.  
Risk Management  
208 S. Akard, Floor 18  
Dallas, TX 75202

Type of Insurance	Description	Type of Limits	Limits of Liability
Property	All Risks	Per Occurrence	Replacement Cost

Affiliates of AT&T's self-insurance will act as if commercial property insurance had been purchased. As contractually obligated, AT&T's self-insurance includes All Perils; Extended Perils – Flood, Earthquake; Business Interruption/Loss of Rents; Construction in Progress; and will waive their rights to recover from the other for any and all loss of or damage to their respective property if such loss or damage is covered, or required by this contractual obligation to be covered, by a valid and collectible commercial insurance policy or self-insurance; including "additional insured" and "loss payees".

The entity shown below provides coverage under its program of self-insurance. Legal entity to which this certificate applies is:  
New Cingular Wireless PCS, LLC

Description of Operations/Locations:

Attention: City of NewportBeach  
Holder Name: Insurance Compliance  
Street Address: PO Box 100085-FV  
City: Duluth  
ZIP: 30096  
Email Address: dv574p@att.com  
Optional Attachment: File Attachment

State: GA  
Date Issued 5/27/2020  
Lease End Date 5/27/2021

AT&T Employee Name: VOZENILEK, DAN  
AT&T Employee Email: dv574p@att.com

Issued By: *Wayne K Johnson*  
AT&T Services, Inc  
Wayne K Johnson

### CANCELLATION:

Should any of the above described self-insured coverages be canceled or materially altered before one year after the issuance of this Certificate, the Company will endeavor to mail thirty (30) days written notice to the certificate holder named above. Failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives. The limits evidenced on the above certificate will not increase or reduce those insurance limits set forth within the stated requirements of the contract to which this certificate applies. The giving of this Certificate will not increase the limits of the Company's liability to the Holder.

Rev. 02.05.2018

EXHIBIT "G"



**From:** m60656@att.com  
**To:** Dhillon, Sunny  
**Cc:** kv166g@att.com  
**Subject:** City of Newport Beach  
**Date:** Friday, February 22, 2019 11:13:02 AM  
**Attachments:** Form.xml

[Submitted by KV166G@att.com]  
 Certificate Of Self Insurance Property



## Certificate of Property Self Insurance

Attn: AT&T Services Inc.

Risk Management  
 208 S. Akard, Floor 18  
 Dallas, TX 75202

Type of Insurance	Description	Type of Limits	Limits of Liability
Property	All Risks	Per Occurrence	Replacement Cost

Affiliates of AT&T's self-insurance will act as if commercial property insurance had been purchased. As contractually obligated, AT&T's self-insurance includes All Perils; Extended Perils – Flood, Earthquake; Business Interruption/Loss of Rents; Construction in Progress; and will waive their rights to recover from the other for any and all loss of or damage to their respective property if such loss or damage is covered, or required by this contractual obligation to be covered, by a valid and collectible commercial insurance policy or self-insurance; including "additional insured" and "loss payees".

The entity shown below provides coverage under its program of self-insurance. Legal entity to which this certificate applies is:

New Cingular Wireless PCS, LLC

**Description of Operations/Locations:**

To install, operate, maintain, and remove Small Cell telecommunication facilities within certain areas of the Public Right-of-Way on City-owned Streetlights.

Attention:	Sunny Dhillon		
Holder Name:	City of Newport Beach		
Street Address:	100 Civic Center Drive		
City:	Newport Beach	State:	CA
ZIP:	92660	Date Issued	2/22/2019
Email Address:	sdhillon@newportbeachca.gov	Lease End Date	3/1/2029

Optional Attachment:

AT&T Employee Name:	Katelyn Voss	Issued By:	
AT&T Employee Email:	kv166g@att.com	AT&T Services, Inc Wayne K Johnson	

**CANCELLATION:**  
 Should any of the above described self-insured coverages be canceled or materially altered before one year after the issuance of this Certificate, the Company will endeavor to mail thirty (30) days written notice to the certificate holder named above. Failure to mail

EXHIBIT "G"