

Market: PNW
Cell Site Number: BR0306
Cell Site Name: Lynwood Center
Fixed Asset Number: 15158127

TELECOMMUNICATIONS FACILITIES

LICENSE AGREEMENT

THIS LICENSE AGREEMENT entered into by and between Public Utility District #1 of Kitsap County, a municipal corporation duly organized and existing under the laws of the State of Washington, as Licensor (hereinafter referred to as “District”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as “Licensee”).

W I T N E S S E T H:

1. PREMISES. The District licenses to the Licensee the right to occupy real property located at No Situs, NE Baker Hill Rd, Bainbridge Island, County of Kitsap, State of Washington, for housing, installing, constructing, operating and maintaining certain telecommunications facilities, legally described and/or depicted in Schedule A attached hereto and incorporated herein (“Premises”). Licensee accepts the Premises for such purpose, subject to the considerations, terms and conditions specified in this Telecommunications Facilities License Agreement (hereinafter referred to as either this “Agreement” or “License”).

2. DEFINITIONS. For the purpose of this License, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

“**Person**” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals, and includes their licensees, trustees and receivers;

“**Public street**” means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the District, which has been acquired, established, dedicated or devoted to public access purposes, including forest access roads;

“**Public way**” means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the District, but only to the extent of the District’s right, title, interest or authority to grant a permit or license to occupy and use such streets and easements for telecommunications facilities;

“**Telecommunications carrier**” means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the area under ownership and/or control of the District, used or to be used for the purpose of offering telecommunications service;

“**Telecommunications facilities**” or “**Telecommunications Facility**” means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, electronics, equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house or offer telecommunications services;

“Telecommunications provider” means and includes every person who provides telecommunications services over telecommunications facilities;

“Telecommunications service” means the providing or offering for rent, sale or license, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Utility easement” means any easement owned by the District and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

3. USES AND PURPOSES. Licensee shall have the use of the Premises for the purpose of transmission and reception of telecommunication services in any and all frequencies using real property and telecommunications facilities approved in Schedule A. Licensee shall be responsible for adherence to all federal, state and local regulations pertaining to the operation of a telecommunications facility.

Licensee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, as described in Schedule A after obtaining required permits and as approved by District on the final construction drawings.

District shall provide Licensee access to the Premises at all times on a twenty four (24) hour a day, seven (7) day a week basis, adequate to service the Premises and the telecommunication facilities at all times during this License. Licensee agrees to provide the District with a schedule outlining the frequency of required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.).

4. NON-EXCLUSIVE LICENSE. Subject to the provisions of Section 7 herein, but for the space on which Licensee has the right to install its telecommunications facilities on the Premises, the rights granted Licensee under this License are nonexclusive, and do not preclude the District from granting a similar license, right, franchise, etc. to other carriers, providers or other persons for telecommunications or any other purpose.

5. TERM OF LICENSE. This License shall be valid for a term of 20 year(s) commencing on the first day of the month following the date that Licensee commences construction (the **“Rent Commencement Date”**), and terminating on the twentieth (20th) anniversary of the Term Commencement Date. The parties hereby acknowledge and agree that this License shall not be revocable, terminable or cancelled, except as specifically provided in this License.

Subject to Section 13 below, this Agreement shall automatically be extended for additional five (5) year terms, upon the same terms and conditions set forth herein unless

Licensee notifies District in writing of Licensee's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the initial term or then-existing extension term.

6. RIGHTS GRANTED. This License does not convey any right, title or interest in the District property, but shall be deemed the right only to use and occupy the District property for the limited purposes and term stated in this License. Further, this License shall not be construed as any warranty of title.

7. INTERFERENCE WITH OTHER USERS. The Licensee acknowledges that the District may enter into licenses with other licensees for their equipment and telecommunications facilities for the purposes of transmitting and receiving telecommunication signals from District property. The District, however, is not in any way responsible or liable for any interference with Licensee's use of the District property, which may be caused by the use and operation of any other licensee's equipment, even if caused by new technology. In the event that any other licensee's activities interfere with the Licensee's use of the District property, and such use or operation was not in existence on the date of execution of this License, and the Licensee cannot resolve this interference with the other licensees, the District will, upon written request by Licensee, cause such interfering use to cease. If such interference to Licensee does not cease promptly or isn't cured to Licensee's reasonable satisfaction, Licensee shall have the right to terminate this License upon written notice thereof to District. Licensee understands that if its use interferes with the then-existing equipment of a prior Licensee, and the interference problem cannot be cured, this License may be terminated by the District. The Licensee shall cooperate with all other licensees to identify the causes of and work towards the resolution of any electronic interference problem. In addition, the Licensee agrees to eliminate any radio or television interference caused to District-owned facilities or surrounding residences at Licensee's own expense and without installation of extra filters on District-owned equipment. Licensee further agrees to accept such interference as may be received from District operated telecommunications in existence on District property as of this Agreement's effective date.

8. OWNERSHIP AND REMOVAL OF IMPROVEMENTS. All landscaping and all other improvements made to District property by Licensee, excluding Licensee's telecommunications facility, shall become the property of the District upon expiration or termination of this License. In the event that the District requires removal of such improvements after termination of this License, such removal shall be accomplished at the sole expense of the Licensee and completed within 30 days after receiving notice from the District requiring removal of the improvements. Additional time may be granted upon the discretion of the District, which approval shall not be unreasonably withheld, delayed or conditioned. In the event that Licensee's telecommunications facilities or other equipment are left upon District property after expiration or termination of this License, they shall, at the District's option, if not removed by the Licensee upon 30 days written notice from the District, be removed and stored at the expense of Licensee. Stored telecommunications facilities that are not claimed by the Licensee within six (6) months from termination of this License shall be deemed abandoned and become the property of the District.

9. CANCELLATION OF LICENSE BY LICENSEE.

A. This License is contingent upon the Licensee obtaining all necessary federal, state and local government permits, approvals and licenses for Licensee's proposed telecommunication facilities ("Government Approvals"). In the event that the Licensee is unable to obtain or maintain all such Government Approvals, it may cancel this License, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days prior written notice to the District. Licensee agrees to restore District property to original condition if cancellation is requested.

B. In the event Licensee determines that the District property is unsuitable for its intended purpose, or for any other or no reason whatsoever, the Licensee shall have the right to cancel the License upon 180 days written notice to the District. However, no prepaid rent shall be refundable; except in the event any changes occur with respect to the District's use of the property subsequent to the effective date of this License (including but not limited to granting rights to use District property to additional licensees, as permitted by the District) and such changes result in the District property becoming unsuitable for Licensee's intended purpose.

10. COMPENSATION TO THE DISTRICT.

A. Starting on the Rent Commencement Date and on or before the fifth day of each month thereafter during the term of the License, Licensee shall pay rent at a rate of [REDACTED], prorated for any partial months. Substantial expansion of the initial configuration contained in Schedule A will result in review and possible re-negotiation of the rental rate contained herein

D. The monthly rental for the second (2nd) year of the initial term and for each year thereafter including any and all extension terms shall be equal to [REDACTED] of the monthly rental payable with respect to the immediately preceding year.

E. Any payments received after the due date shall include a one-time late fee equal to [REDACTED] of the past due amount. If any payments are not brought current within thirty (30) days of Licensee's receive of written notice from District that such amount is past due, such past-due amount shall incur interest at the lesser of [REDACTED] per annum or the greatest amount permitted at law, from the date past due until paid in full.

11. AMENDMENT OF LICENSE. Except as provided within this License, a new License application and an amendment to this License shall be required if Licensee desires to expand, modify, or relocate its telecommunications facilities or other equipment located upon District property. If ordered by the District to locate or relocate its communications facilities or other equipment on the District property, the District shall grant a License amendment without further application.

12. INITIAL PAYMENT. As additional consideration for this License, Licensee shall make an initial payment of [REDACTED], within forty-five (45) days after full execution of this agreement.

13. OBLIGATION TO CURE AS A CONDITION OF RENEWAL. This License shall not be renewed until any ongoing violations or defaults in the Licensee's performance of the License have been cured, or a plan detailing the corrective action to be taken by the Licensee has been approved by the District.

14. IMPROVEMENTS. Licensee shall have the right to materially modify the physical appearance of the Telecommunications Facilities or increase the size of the Premises at any time during the term of this License, upon the approval of the Licensor, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained in this License to the contrary, Licensee shall not be required to obtain Licensor's approval for like-kind equipment changes or minor routine repairs or minor alterations, or modifications to the Telecommunications Facilities.

15. POLICE POWER. In accepting this License, the Licensee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the District to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the District pursuant to such power.

16. INTERFERENCE WITH THE PUBLIC WAYS. The Licensee shall not locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the District, by the general public, or by other persons authorized to use or be present in or upon the public ways. All such Licensee's telecommunication facilities which interfere with public ways shall be moved by the Licensee, at the Licensee's cost, temporarily or permanently, as determined by the District General Manager.

17. [INTENTIONALLY DELETED].

18. MAINTENANCE OF LICENSE FACILITIES. The Licensee shall maintain its telecommunication facilities in good and safe condition and in a manner that complies with all applicable federal, state and local laws. Licensee shall not permit waste, damage, or injury to the Premises including any District property, public ways of the District, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. Licensee shall not store any chemicals, hazardous or otherwise, in the well head /tank protection area. Licensee shall not restrict Premises access to District. District shall have the right to inspect the Licensee's telecommunications facilities and equipment at any time during the term of this License to ensure compliance with the terms and conditions herein; *provided, however*, Licensee has the right to be present at all inspections of Licensee's telecommunications facilities and equipment, District shall give Licensee at least 72 hours prior notice of such intent. Notwithstanding the foregoing to the contrary, unless District is accompanied by Licensee and receives specific permission to do so, District shall not touch or make any hard connection to Licensee's telecommunication facilities or equipment during such inspection.

19. SIGNAGE. Licensee shall display proper signage as required by the FCC as well as current signage on telecommunication facilities identifying Licensee, its address, and a 24 hour phone number. Signage shall be posted and clearly visible at all times.

20. RELOCATION OF FACILITIES. Within one hundred eighty (180) days following written notice from the District, the Licensee shall, at District's expense, temporarily or permanently relocate, change or alter the position of any telecommunications facilities within the public ways or upon District property to a mutually acceptable alternate location whenever the District General Manager shall have determined that such relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any District or other public improvement in or upon the public ways; and

B. The operations of the District or other governmental entity in or upon the public ways.

Additional time for removal or relocation shall be granted for Licensee to obtain all necessary Government Approvals to facilitate such removal or relocation, and may otherwise be granted at the discretion of the District which extension shall not be unreasonably withheld, delayed or conditioned. If Licensee fails to relocate the property upon request by the District, Licensee agrees to reimburse the District for any and all removal costs incurred by the District.

21. REMOVAL OF UNAUTHORIZED FACILITIES. Within sixty (60) days following written notice from the District, Licensee or any person who owns, controls or maintains on behalf of Licensee any unauthorized telecommunications system, facility or related appurtenances within the public ways or real property of the District shall, at its own expense, remove such facilities or appurtenances from the public ways or property of the District. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the Licensee's License without approved extension or renewal;

B. Upon abandonment of a facility within the public ways or real property of the District. Subject to the terms of Section 8, any property of a Licensee shall be deemed abandoned if left in place 60 days after expiration or termination of the License;

C. If the system or facility was constructed or installed without the prior grant of a License;

D. If the system or facility was constructed or installed without the prior issuance of a required District approval or permits; and

E. If the system or facility was constructed or installed at a location not permitted by the License.

Provided, however, that the District may, in its sole discretion, allow a Licensee, or other such persons who may own, control, or maintain telecommunications facilities within the public ways or property of the District to abandon such facilities in place. No facilities of any type may

be abandoned in place without the express written consent of the District. Any plan for abandonment or removal of a Licensee's facilities must be first approved by the General Manager, and all necessary permits must be obtained prior to such work. Upon authorized permanent abandonment of the property of such persons in place, the property shall become that of the District, and such persons shall submit to the District an instrument in writing, to be approved by the District Attorney, transferring to the District the ownership of such property, in which event Licensee shall have no further obligations or liability with respect to such property or facilities. The provisions of this Section shall survive the expiration, revocation, or termination of the License granted hereunder. If requested by Licensee, but the District does not authorize abandonment and Licensee fails to remove such facilities within thirty (30) days following receipt of notice to do so, Licensee agrees to reimburse the District for any and all costs incurred by the District for facilities removal.

22. EMERGENCY REMOVAL OR RELOCATION OF FACILITIES.

23. DAMAGE TO FACILITIES. Unless directly and proximately caused by the negligence or willful misconduct of the District, the District shall not be liable for any damage to or loss of any telecommunications facility upon District property or within the public ways of the District as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such District property or within the public ways by or on behalf of the District.

24. RESTORATION OF PUBLIC WAYS, OTHER WAYS AND DISTRICT PROPERTY.

A. When the Licensee, or any person on its behalf, does any work in or affecting any public ways, other ways or District property, or when Licensee, or any person on its behalf damages any public ways, other ways or District property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to District construction standards as adopted before the work was undertaken. Licensee shall obtain all requisite permits for such work.

B. If weather or other conditions do not permit the complete restoration required by this Section, the Licensee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Licensee's sole expense and the Licensee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. The Licensee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

D. The District's General Manager shall be responsible for inspection and final approval of the condition of the public ways, other ways, and District property following

any construction and restoration activities therein, reasonable wear and tear excepted. Further, the provisions of this Section shall survive the expiration, revocation, or termination of this License.

25. FACILITIES MAPS. The Licensee shall provide the District with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of its telecommunications facilities within the public ways and upon District property pursuant to this License. The Licensee shall provide the District with updated maps within a reasonable period of time after receipt of written request by the District if Licensee has made changes to its telecommunication facilities and/or the Premises.

26. BOOKS, RECORDS AND MAPS. All books, records, maps and other documents, maintained by the Licensee with respect to its telecommunications facilities within the public ways and upon District property pursuant to this License shall be made available for inspection by the District at reasonable times and intervals; *provided, however*, that nothing in this Section shall be construed to require the Licensee to violate state or federal law regarding subscriber privacy, nor shall this Section be construed to require the Licensee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

27. LICENSED CO-LOCATION. Licensee shall have the right, with prior District approval and Scott Shelton approval through June 30, 2035, to sublet the Premises consistent with this License; provided:

The sub-licensee has complied, to the extent applicable, with the requirements contained in this License and Scott Shelton receives 30% of the rental through June 30, 2035 fee for sub-licensee co-locations. After June 30, 2035, the District will receive 30% of the rental fee. District encourages co-location on existing telecommunications facilities and to that end will not unreasonably withhold approval of sub-licenses.

28. UTILITIES. Electrical, HVAC and telephone service, or other utilities are to be provided to the Premises and site at Licensee's expense and as outlined in Schedule A. District shall cooperate with Licensee in obtaining utility service.

29. LICENSES AND TAXES. Upon commencement of the License, Licensee shall be responsible for paying real or personal property, excise, business and occupation, and/or other taxes or licenses which may in the future be assessed as a direct result of the Licensee's operations of its telecommunications facilities described herein.

30. INSURANCE. The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through

either party as a result of any asserted right of subrogation. All such policies of insurance obtained by either party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other party.

- A.** Licensee will maintain at its own cost;
 - i. Commercial General Liability insurance with limits of \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.
 - ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a minimum combined limit of one million dollars (\$1,000,000) per occurrence.
 - iii. Workers Compensation insurance providing the statutory benefits and one million dollars (\$1,000,000) of Employers Liability coverage.

Licensee will include the District as an additional insured on the Commercial General Liability policies with a cross liability endorsement.

B. District will maintain at its own cost commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.

C. Notwithstanding the foregoing, both parties shall have the right to self-insure the insurance coverage required by this License.

31. GENERAL INDEMNIFICATION.

A. Except for the negligence or willful misconduct by District or any of its employees, agents, or contractors, Licensee covenants not to bring suit against the District and hereby agrees to defend, indemnify, and hold harmless the District, its appointed and elected officers, employees, agents and volunteers from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Licensee's own employees to which the Licensee might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of the performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the Licensee, its agents, employees, representatives or assigns. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the sole negligence of the District. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

The Licensee releases and waives any and all claims against the District, its officers, employees, agents, and volunteers for damage to or destruction of the Licensee's telecommunication facilities, except to the extent any such damage or destruction is caused or contributed to by the willful or negligent actions of the District, its officers, employees, agents, or volunteers.

B. District agrees to indemnify, defend and hold Licensee harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising from the negligence and willful misconduct of District, its employees, invitees, agents or independent contractors, or District's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensee, its employees, agents or independent contractors.

32. [INTENTIONALLY DELETED].

33. ASSIGNMENTS OR TRANSFERS OF LICENSE. Notwithstanding anything to the contrary contained in this License, this License may be sold, assigned or transferred by the Licensee without any approval or consent of the District to the Licensee's principals, affiliates, or subsidiaries, or to its principals' affiliates or subsidiaries, or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission ("FCC") in which the Property is located by reason of a merger, acquisition or other business reorganization. Except as provided in the foregoing, ownership or control of this License may not, directly or indirectly, be transferred, assigned or disposed of by sale, license, merger, consolidation or other act of the Licensee, by operation of law or otherwise, without the prior written consent of the District, which consent shall not be unreasonably withheld, conditioned, or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

A. No License shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the License, unless otherwise provided.

B. The Licensee and the proposed assignee or transferee of the system shall provide and certify the following information to the District not less than sixty (60) days prior to the proposed date of transfer:

- (1)** Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2)** Any other information reasonably required by the District.

C. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the telecommunications facility pursuant to this License.

D. Unless otherwise provided in this License, the Licensee shall reimburse the District for up to Five Hundred Dollars (\$500.00) of the direct costs and expenses reasonably incurred by the District in considering a request to transfer or assign this License. No approval shall be deemed approved until such costs and expenses have been paid.

E. Any transfer or assignment of this License without prior written approval of the District, if required under this Section or pursuant to the License, shall be void and is cause for revocation of the License.

34. TRANSACTIONS AFFECTING CONTROL OF LICENSE. The Licensee shall notify the District within a reasonable time after any change in, or transfer of, or acquisition by any other party of Licensee's interest in this License. In the event that the District adopts a resolution or other appropriate order denying its consent to such change, transfer or acquisition, where District's consent to an assignment of this License is required, then either Licensee or the District may cancel this License upon written notice to the other. District approval shall not be required for mortgaging purposes or if said transfer is from the Licensee to another person or entity controlling, controlled by, or under common control with the Licensee.

35. REVOCATION OR TERMINATION OF LICENSE. This License, granted by the District to use or occupy public ways of the District or District property, may be terminated for the following reasons:

A. Licensee's construction or operation in the District or in the public ways of the District or upon District property without proper District authorization;

B. Licensee's construction or operation at an unauthorized location;

C. Intentionally omitted;

D. Unauthorized assignment of this License;

E. Unauthorized sale, assignment or transfer of Licensee's License or a substantial interest therein;

F. Misrepresentation by or on behalf of the Licensee in any application or written statement upon which the District relies in making the decision to grant, review or amend said License;

G. Abandonment of telecommunications facilities in the public ways or upon District property;

H. Failure to relocate or remove facilities as required in this License;

I. Failure to pay taxes, compensation, fees or costs when and as due the District;

J. Insolvency or bankruptcy of the Licensee;

K. Failure to construct or operate in accordance with approved permits; and

L. Violation of any material provision or term of this License that is not cured within the applicable cure period provided for in this License.

36. NOTICE AND DUTY TO CURE. In the event that Licensee is in violation of or defaults under the provisions of this License, the Licensee shall be given written notice of the apparent violation, default or non-compliance, providing a short and concise statement of the nature and general facts of the violation, default or non-compliance, and providing the Licensee a reasonable period of time, not exceeding 90 days and not less than 30 days, to cure the violation.

37. STANDARDS FOR REVOCATION OR LESSER SANCTIONS. If a determination is made by appropriate District authority that a Licensee willfully violated or failed to comply with any of the provisions of this License within the applicable cure period, after notice is given the Licensee by the District under the provisions of this License, then the Licensee shall forfeit all rights conferred hereunder and this License may be revoked or annulled by the District. The District may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies and to recover damages and costs incurred by the District by reason of the Licensee's failure to comply.

38. NOTICE. All notices hereunder must be in writing and shall be deemed validly given if sent by certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice given at least thirty (30) days in advance):

Licensors: Public Utility District #1 of Kitsap County
1431 Finn Hill Rd, PO Box 1989
Poulsbo, WA 98370
Telephone: (360) 779-7656
Email: depperson@kpud.org

Licensee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: BR0306; Cell Site Name: Lynwood Center (WA)
Fixed Asset #: 15158127
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: BR0306; Cell Site Name: Lynwood Center (WA)
Fixed Asset #: 15158127
208 S. Akard Street

Notice shall be effective upon actual receipt, refusal, or returned undelivered, as shown on the receipt obtained pursuant to the foregoing.

39. SAFETY REQUIREMENTS. The Licensee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a License area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The District reserves the general right to see that the telecommunications facility of the Licensee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the District, the District will, after discussions with the Licensee, establish a reasonable time for the Licensee to make necessary repairs. If the repairs are not made within the established time frame, the District may make the repairs itself or have them made and collect all reasonable costs thereof from the Licensee.

40. LIENS. Licensee shall not permit any lien to be imposed upon the property of the District as a result of work done by or on behalf of Licensee and shall indemnify and hold the District harmless against any and all expenses, including reasonable attorney's fees and court costs in connection with any such lien.

41. MISCELLANEOUS.

A. This agreement shall be governed and interpreted by the laws of the State of Washington and any judicial action to resolve disputes arising out of this agreement shall be brought in Kitsap County Superior Court.

B. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

C. Each party agrees to furnish the other, within thirty (30) days after request, such information as the other may reasonably request.

D. This License constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said License must be in writing and executed by both parties.

E. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker.

F. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

G. Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Agreement in a form mutually acceptable to both parties. Either party may record said Memorandum of Agreement at any time during the term, in its absolute discretion. Thereafter during the term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement.

H. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits and schedules are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination," "cancellation," or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vii) the singular use of words includes the plural where appropriate.

I. Licensee and District each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

J. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Licensee and District each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

42. FIRE PRECAUTIONS. Licensee will ensure that all Forest Protection Regulations and Fire Precaution Levels (IFPLs) are observed during closed season (April 15 – October 15). Licensee shall be responsible for checking IFPLs and keeping activities within those allowed for a specific IFPL. Washington State Department of Natural Resources regulates forest land activities and provides daily IFPLs via telephone and the internet at (800) 527-3305; <https://fortress.wa.gov/dnr/protection/ifpl/>.

43. NONDISCRIMINATION. Licensee shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, sexual orientation, religion, age, marital status or disability, except employment actions based on a bona fide occupational qualification.

44. WAIVER OF DISTRICT'S LIENS. District waives any and all lien rights it may have, statutory or otherwise, concerning Licensee's telecommunication facilities or any

portion thereof. Licensee's telecommunication facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; District consents to Licensee's right to remove all or any portion of the telecommunication facilities from time to time in Licensee's sole discretion and without District's consent.

45. DISTRICT OBLIGATIONS. District will maintain and repair the District property and access thereto, the water tower, and all areas of the Premises where Licensee does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. District will be responsible for maintenance of landscaping on the District property, including any landscaping installed by Licensee as a condition of this Agreement or any required permit. District shall maintain the water tower's structural integrity at all times (which shall mean that at no time will District allow the water tower's condition to become, or remain, overstressed under any applicable structural standards). District shall at all times during the term of this Agreement reserve and have ready for Licensee's immediate use sufficient structural loading capacity on the water tower to support Licensee's installation of up to twenty-five thousand square inches (25,000 sq. in.) of Wind Load Surface Area, in the aggregate, of Communication Facilities anywhere on the Tower (the "**Allowed Wind Load Surface Area**"). "**Wind Load Surface Area**" means the Flat Plate Equivalent Area, as defined in ANSI TIA standards, of any appurtenance (excluding all mounts, platforms, cables and other non-operating equipment) at ninety degrees (90°) perpendicular to wind direction, possessing the characteristics of flat material, with associated drag factors. District shall be responsible for the costs of all structural modifications to the water tower, including the costs of related Government Approvals or other approvals, to support the Allowed Wind Load Surface Area. In no event shall Licensee be responsible for water tower modification costs to support the installations of other tenants or for the water tower to comply with applicable law so long as Licensee's installation is within the Allowed Wind Load Surface Area.

46. WARRANTIES.

A. Licensee and District each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

B. District represents, warrants and agrees that: (i) District solely owns the District property legally described in Schedule A as a legal lot in fee simple, and solely owns the Water Tower located thereon; and (ii) District's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease, license, or other agreement binding on District.

47. ENVIRONMENTAL.

A. District represents and warrants (i) the District property, as of the effective date of this Agreement, is free of hazardous substances, including asbestos-containing materials

and lead paint, and (ii) the District property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. District and Licensee agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

B. District and Licensee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 47.A. District agrees to hold harmless and indemnify Licensee from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of District for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the District property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omissions of District during the term. Licensee agrees to hold harmless and indemnify District from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Licensee for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the District property by Licensee.

C. The indemnification provisions contained in this Section 47 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of District property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 47 will survive the expiration or termination of this Agreement.

D. In the event Licensee becomes aware of any hazardous materials on the District property, or any environmental, health or safety condition or matter relating to the District property, that, in Licensee's sole determination, renders the condition of the Premises or District property unsuitable for Licensee's use, or if Licensee believes that the current use or continued use of the Premises would expose Licensee to undue risks of liability to a government agency or other third party, then Licensee will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to District.

48. DISTRICT DEFAULT. The following will be deemed a default by District and a breach of this Agreement: (i) District's failure to cure an interference problem as required by Section 2 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) District's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Licensee specifying the failure. No such failure, however, will be deemed to exist if District has commenced to cure the default within such period and provided such efforts are prosecuted to completion with

reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of District. If District remains in default beyond any applicable cure period, Licensee will have: (i) the right to cure District's default and to deduct the costs of such cure from any monies due to District from Licensee, and (ii) any and all other rights available to it under law and equity.

49. CONDEMNATION. In the event District receives notification of any condemnation proceedings affecting the District property, District will provide notice of the proceeding to Licensee within twenty-four (24) hours. If a condemning authority takes all of the District property, or a portion sufficient, in Licensee's sole determination, to render the Premises unsuitable for Licensee, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Licensee will include, where applicable, the value of its telecommunication facilities, moving expenses, prepaid rent, and business dislocation expenses. Licensee will be entitled to reimbursement for any prepaid rent on a *pro rata* basis.

50. CASUALTY. District will provide notice to Licensee of any casualty or other harm affecting the District property within twenty-four (24) hours of the casualty or other harm. If any part of Licensee's telecommunication facilities or the District property is damaged by casualty or other harm as to render the Premises unsuitable, in Licensee's sole determination, then Licensee may terminate this Agreement by providing written notice to District, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof and to be reimbursed for any prepaid rent on a *pro rata* basis. District agrees to permit Licensee to place temporary transmission and reception facilities on the District property, but only until such time as Licensee is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including rent. If District or Licensee undertakes to rebuild or restore the Premises and/or Licensee's telecommunication facilities, as applicable, District agrees to permit Licensee to place temporary transmission and reception facilities on the District property at no additional rent until the reconstruction of the Premises and/or the telecommunication facilities are completed. If District determines not to rebuild or restore the District property, District will notify Licensee of such determination within thirty (30) days after the casualty or other harm. If District does not so notify Licensee and Licensee decides not to terminate under this Section, then District will promptly rebuild or restore any portion of the District property interfering with or required for Licensee's permitted use of the Premises to substantially the same condition as existed before the casualty or other harm. District agrees that the rent shall be abated until the District property and/or the Premises are rebuilt or restored, unless Licensee places temporary transmission and reception facilities on the District property.

51. RIGHT OF FIRST REFUSAL. Notwithstanding any provisions in this Agreement to the contrary, if at any time after the effective date of this Agreement District receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the rent payments associated with this

Agreement or an offer to purchase an easement with respect to the Premises (“**Offer**”), District shall immediately furnish Licensee with a copy of the Offer. Licensee shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Licensee may assign its rights to a third party. If Licensee chooses not to exercise this right or fails to provide written notice to District within the ninety (90) day period, District may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this License. If District attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section, the sale, conveyance, assignment or transfer shall be void. Licensee shall not be responsible for any failure to make payments under this License and reserves the right to hold payments due under this License until District complies with this Section. Licensee’s failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section with respect to any future proposed conveyances as described herein.

52. WAIVER OF JURY TRIAL. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LICENSE OR THE TRANSACTIONS IT CONTEMPLATES.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this License to be effective as of the latter of the signature dates below.

LICENSEE:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

DISTRICT:

Public Utility District #1 of Kitsap County,
a municipal corporation duly organized and existing
under the laws of the State of Washington

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

_____, District Attorney

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

LICENSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Licensee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Licensee.

Notary Public: _____
My Commission Expires: _____

DISTRICT ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 20____ before me, the subscriber, a person authorized to take oaths in the State of _____, personally appeared _____ who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

Schedule A

District's Property includes:

Lot(s) A of City of Bainbridge Island Short Subdivision No. SPT07-31-91-1, recorded in Volume 8, Page(s) 13 of Short Plats, Under Auditor's File Nos. 9209030072 and 209030073, being a portion of Government Lot 5 of Section 4, Township 24 North, Range 2, W.M., in Kitsap County, Washington.

Together with: Water rights, if any, under Water Rights Control Nos: 46751; 46752; G1-23438C; G1-23638C; G1-23640C; G1-24392C; G1-23639C; and S1-12933C.

APN: 042402-1-054-2005

Address: No Situs – NE Baker Hill Rd, Bainbridge Island, WA 98110

Licensee's Premises:

Ground lease area = approximately 250 Square Feet

Water Tower reserved loading for Licensee's telecommunication facilities includes 25,000 square inches of wind load surface area on the Water Tower.



