

**RESOLUTION NO. 20-42****Resolution Of The City Council Of The City Of Emeryville Approving A Master License Agreement Between The City Emeryville And New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company, (AT&T) And Authorizing The City Manager To Execute The Agreement**

**WHEREAS**, on September 26, 2018, the FCC adopted the Declaratory Ruling and Third Report and Order in the *Matter of Accelerating Wireless Broadband Deployment BY Removing Barriers to Infrastructure Investment* (FCC 18-133, WT Docket No. 17-79, 85 FR 51867) (the "Ruling"), which impacts the City's ability to regulate wireless facilities; and

**WHEREAS**, the City Council has adopted both Ordinance No. 19-001 (an urgency ordinance, and Ordinance No. 19-002, both of which amended the Planning Regulations to ensure that the City could comply with the Ruling; and

**WHEREAS**, Emeryville Municipal Code section 9-5.1704(c)(7) requires a wireless communications carrier to sign a master license agreement prior to applying for permits from the City to install wireless facilities; and

**WHEREAS**, AT&T desires to modify the City's standard terms and conditions in the master license agreement, and the City desires to accommodate those modifications; now, therefore

**BE IT RESOLVED** by the City Council of the City of Emeryville that it does hereby authorize the City Manager to execute the master license agreement with AT&T, attached hereto as Exhibit A, and to execute any amendment, provided the amendment does not modify the term of the master license agreement or the Fee, as that term is defined in the master license agreement.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 19, 2020, by the following vote:

AYES:	5	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:

Christian R. Patz

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

Michael Gunder

CITY ATTORNEY

## **LICENSE AGREEMENT FOR WIRELESS INSTALLATIONS ON PUBLIC STRUCTURES**

This License Agreement For Wireless Installations on Public Structures ("Agreement") is made and entered into as of the Effective Date by and between City of Emeryville, California ("Licensor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee").

### **RECITALS**

WHEREAS, Licensee seeks to attach Wireless Installations to certain Structures and to utilize certain Infrastructure upon the terms and conditions set forth below;

WHEREAS, Licensor is willing to accommodate Licensee's non-exclusive use of such Structures and Infrastructure in accordance the terms and conditions of this Agreement; and

WHEREAS, any capitalized terms in this Agreement shall have the meaning ascribed to them in Exhibit 1 attached hereto and incorporated herein by reference.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby conclusively acknowledged, the Parties agree as follows:

### **1. GRANT OF LICENSE**

1.1 Grant of License. Licensor hereby grants Licensee a license for Licensee's use of Licensed Sites for the Permitted Use including replacement or upgrade of Licensor's Structures and Infrastructure, as provided herein and subject to first obtaining approval through individual Site License Supplements signed by the Parties pursuant to this Agreement. The license granted herein is revocable only in accordance with the terms and conditions of the Agreement. No use of Licensor's Structures or Infrastructure under this Agreement shall create or vest in Licensee any ownership or property rights in such Structures or Infrastructure. Nothing in this Agreement grants Licensee the right to make any Wireless Installation, or to install other facilities, including Wireless Installations, that do not conform to this Agreement.

1.2. Non-Exclusive Agreement. This Agreement and the license granted hereunder are non-exclusive.

1.3. Limitations. This license is granted in Licensor's proprietary capacity. This Agreement is not an authorization to use the public right-of-way. Nothing in this Agreement shall limit in any way, or is a substitute for, Licensee's obligation to obtain any additional required franchises, authorizations, approvals or permits from any Licensor department, board or commission or other governmental agency that has authority over the Licensee's activities involving use of the Licensor's Structures and Infrastructure in the public rights-of-way or limit the City's exercise of rights that it may have in connection with the grant or exercise of such franchises, authorizations, approvals or permits, whether or not such activities involve a Permitted Use. Without limiting the generality of the foregoing, City believes it may have the right to require a franchise and franchise fees under Cal. Cal. Const. Art. XII, Section 8, or franchise fees under Section 5840(q) of the Digital Infrastructure and Video Competition Act (as codified in Public Utilities Code section 5800 et seq.) ("DIVCA") or federal law, 47 U.S.C. 542, and City does not intend by entering into this Agreement to waive any of those rights or any legal arguments it might make to defend such rights. Licensee by entering into this Agreement does not waive any rights or arguments it might have under state or federal law. The Parties do not intend to resolve those disputes here nor do they intend to create uncertainty about what services can be offered under this Agreement. If City demands a franchise or franchise fees pursuant to DIVCA or other state or federal law, or if there is a change of law or other legal development under which the services being provided by Licensee pursuant to this Agreement are subject to a franchise or franchise fees under DIVCA or other state or federal law, the Parties will meet and confer in good faith for a period not to exceed one hundred and twenty (120) days ("the Negotiation Period") to negotiate terms, including any compensation owed by Licensee to the City under DIVCA or other state or federal law. If the Parties are not able to reach agreement during the Negotiation Period, the Parties

may exercise any remedies that they may have. However, the Parties agree that in no instance shall City seek to prevent Licensee from providing any such service under this Agreement.

## **2. TERM**

2.1 Agreement Term. This Agreement shall commence as of the Effective Date, and, if not lawfully terminated sooner, remain in full force and effect for the ten (10 years) ("Term"). The Term of this Agreement shall have no bearing on the revocability of any particular Site License Supplement.

### **2.2 Site License Supplement Term.**

(a) The initial term for each individual Site License Supplement shall commence on the Commencement Date and shall be coterminous with the Agreement. Promptly following Licensee's receipt of Licensor's written request, the Parties shall confirm in an Acknowledgment the Commencement Date of the Site License Supplement and the expiration date of the Agreement.

(b) Each Site License Supplement shall remain in force so long as the Agreement remains in force unless earlier terminated under Section 13. If Licensee remains in possession of the Structure and/or Infrastructure after the termination of the Site License Supplement, then Licensee will be deemed to be occupying the Structure and/or Infrastructure on a Holdover Term basis, subject to the terms and conditions of this Agreement, irrespective of whether the Agreement has expired or been terminated.

## **3. CHARGES, BILLING AND PAYMENT**

### **3.1 Annual Fee.**

(a) Licensee shall pay Licensor an annual fee ("Fee") established by this Section 3.1. References to the term "Fee" in this Agreement shall be read to refer to the Alternate Fee in Section 3.1(c) when applicable. The current Fee is in the amount of Two Hundred Seventy and No/100 Dollars (\$270.00) per Wireless Installation located in Licensor's right-of-way for each year of the Site License Supplement Term. The Fee is per Wireless Installation, and includes all Structure, Infrastructure, appurtenant equipment and facilities used in connection with each Wireless Installation.

(b) On the anniversary of the Effective Date each year, the Fee set forth in sub-section (a) of Section 3.1 shall be increased annually by the amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-Hayward index, metropolitan statistical area (or if such index is discontinued, then in the most similar successor index). The increase in the Fee shall be automatic without Licensor providing notice of the Fee increase. If Licensee does not terminate the Agreement prior to the effective date of such Fee increase, the new Fee shall apply on a prospective basis to all existing and future Wireless Installations. Notwithstanding the foregoing, in no event shall the annual increase be less than three percent (3%) or more than five percent (5%) of the Fee for the previous year.

(c) Licensee acknowledges that the FCC has adopted a Declaratory Ruling (FCC 18-133) that relates to the Fee charged by the City. The Declaratory Ruling is in effect, but is currently the subject of litigation. During the effective period of the Declaratory Ruling, Licensee shall pay the Fee as calculated in sub-sections (a) and (b) of Section 3.1. However, in the event that the relevant provisions of the FCC Declaratory Ruling cease to be effective, (for example, because they are stayed after going into effect, or they are vacated or invalidated and have not been replaced by the FCC with an alternative provision setting a specific amount for rent), the Licensee shall automatically and immediately be obligated to pay an Alternate Fee of one thousand, two hundred, fifty dollars (\$1,250.00) per year for each Site License Supplement commencing on the date the FCC Declaratory Ruling ceases to be effective, as established by the applicable method in which the FCC Declaratory Ruling is determined to no longer be effective. The Alternate Fee for all Site License Supplements shall be increased annually on the anniversary of the Effective Date by the amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-Hayward index, metropolitan statistical area (or if such index is discontinued, then in the most similar successor index) for



the remainder of the Term. Notwithstanding the foregoing, in no event shall the annual increase be less than three percent (3%) or more than five percent (5%) of the Fee for the previous year. If Licensee has paid the Fee in advance for a year, and the relevant provisions of the FCC Declaratory Ruling subsequently cease to be effective during the same year, the Licensee shall pay the difference between the Fee and the Alternate Fee for the period from the date the relevant provisions of the FCC Declaratory Ruling ceased to be effective, until the anniversary of the Effective Date for any existing Site License Supplements ("Fee Adjustment").

3.2 Timing of Payment. Licensee shall make the first payment of the Fee under any Site License Supplement within forty-five (45) days of the Commencement Date. Thereafter, the Fee for each year shall be paid in advance on or before each anniversary of the Effective Date of the Agreement during the Site License Supplement Term. However, if the Commencement Date of a Site License Supplement falls within forty-five (45) days prior to the anniversary of the Effective Date of the Agreement, Licensee shall submit the first payment of the Fee under that Site License Supplement, together with the Fee for the following year, when the latter Fee is due.

3.3 Billing and Payment Generally. Licensee shall calculate and pay the Fee for all of the existing Wireless Installations annually in advance on or before the anniversary date of the Effective Date of the Agreement. All bills and other requests for payment to Licensor under this Agreement (other than the payment of the Fee) shall be presented in writing to Licensee and accompanied with reasonable substantiation of the costs incurred by Licensor. Properly presented invoices shall be paid by Licensee within ninety (90) days of receipt of invoice accompanied by such substantiation.

#### 3.4 Unauthorized Wireless Installations.

(a) If Licensor discovers any Licensee Wireless Installations have been installed on Licensor's Structures or Infrastructure without authorization pursuant to a Site License Supplement, Licensor shall send an invoice to Licensee for a sum equal to five (5) times the then current Fee applicable to each of its Wireless Installations as compensation for the unauthorized attachments and, within sixty (60) days from the date of such invoice, Licensee shall (i) pay the invoiced amount to Licensor and submit a Site License Application for the unauthorized Wireless Installations, or (ii) pay the invoiced amount to Licensor and remove the unauthorized Wireless Installation, or (iii) produce documentation showing Licensor's prior approval of the Wireless Installation(s) identified in the invoice.

(b) If, in accordance with section 3.4(a), Licensee fails to pay all fees and submit the Site License Application, pay all fees and remove the Wireless Installation or submit documentation satisfactorily showing Licensor's prior approval within sixty (60) days of receipt of Licensor's invoice, Licensor may remove the unauthorized Wireless Installations at Licensee's expense. If Licensor removes such unauthorized Wireless Installations, those Wireless Installations shall become the property of Licensor, which shall have sole rights over their disposition. Licensor's removal of unauthorized Wireless Installations shall not release Licensee from its obligation to pay those invoiced fees accruing pursuant to this Section 3.4.

3.5 Performance and Removal Bond. Within fourteen (14) days of the Commencement Date of each Site License Supplement, at its own expense, Licensee shall furnish a performance and removal bond for benefit of the Licensor in the amount of \$25,000 for up to 10 Site License Supplements, \$50,000 for 11-25 Site License Supplements, and \$75,000 for 26 or more Site License Supplements in order to guarantee Licensee's payment and performance of sums and liabilities that may become due to Licensor for all Fees and other amounts and liabilities required by or concerning the Site License Supplement.

## 4. SITE LICENSE PROCESS

4.1 Site License Application. Before installing any new or additional Wireless Installation onto any Structure or utilizing any Infrastructure, Licensee shall apply for a Site License Supplement from

Licensor using a Site License Application in the form attached as Exhibit 2. Licensee will identify in the Site License Application any Make Ready Work it believes needs to be performed in connection with Licensee's use of the Structure and/or Infrastructure.

4.2 Processing of Site License Applications. Licensor will take reasonable steps to notify Licensee of the specific deficiencies in any Site License Application within thirty (30) days of its submission, and Licensor will take reasonable steps to approve or reject each Site License Application within sixty (60) days of its submission. Licensor may for any lawful reason, including but not limited to, aesthetic grounds, locational grounds, or Technical Grounds, reject a Site License Application, or limit the number and/or technical characteristics (e.g., weight or size) of any Wireless Installation on any Structure or Infrastructure. In the event Licensor determines, based upon Technical Grounds, that inadequate space or structural capacity exists on its Structure or inadequate space or capacity exists on its Infrastructure to accommodate any proposed Wireless Installation, and/or determines that a Wireless Installation as proposed in a Site License Application is otherwise unacceptable (for example, for aesthetic reasons), Licensee may resubmit its Site License Application with a request to have such Structure(s) replaced or upgraded as part of Make Ready Work or such Infrastructure replaced or upgraded as part of Make Ready Work, at Licensee's sole expense, with Structure(s) or Infrastructure with adequate space and structural capacity and/or adequate concealment to accommodate the proposed Wireless Installation. In the event of a rejection of a Site License Application, Licensor shall provide a written explanation to Licensee of the basis for the rejection. In the event that Licensor approves Licensee's Site License Application, then the Parties shall promptly proceed in good faith to sign and deliver a Site License Supplement for the Wireless Installation in the form attached as Exhibit 3 fully consistent with Licensor's approval of the Site License Application.

4.3 Modifications and Replacements. Subsequent to the original Wireless Installation approved by Licensor, Licensee may, without submitting a new Site License Application, modify or replace all or a portion of the Wireless Installation so long as such modification or replacement (a) results in the installation of equipment within the spaces designated or depicted in the Site License Application; (b) results in no changes that defeat existing concealment or are inconsistent with other permit conditions of approval; or the approved Site License Application; and (c) the resulting installation does not increase the load on the applicable Structure or the utilization of the Infrastructure beyond the loading or utilization, if any, that was established in the original Site License Application.

## **5. MAKE READY WORK FOR STRUCTURES AND INFRASTRUCTURE**

5.1 Make Ready Work. At the time of approving the Site License Application, Licensor will advise Licensee of the earliest date when Licensee may perform the Make Ready Work.

5.2 Costs To Rearrange/Adjust Facilities of Others. If a Person, other than Licensee, must rearrange or adjust any of its facilities to accommodate a new Wireless Installation, Licensee shall coordinate such activity at Licensee's sole expense; provided, however, that Licensee shall not be responsible for any costs necessary to correct Licensor or other Person's attachments that are non-compliant with Laws.

## 6. GENERAL LICENSEE OBLIGATIONS

6.1 Technical Requirements and Specifications. At its own expense, Licensee shall perform Make Ready Work and erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with (a) the requirements and specifications of Safety Codes; (b) Licensors' standards, and (c) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction. Changes to the requirements, specifications, standards, rules and orders in subsections (a), (b) and (c) shall not apply retroactively unless required by Laws, and Licensor shall give at least sixty (60) days' written notice of changes to the standards in subsection (b).

6.2 Maps. Upon the completion of each Wireless Installation, Licensee must promptly furnish to Licensor a current list of all Wireless Installations and a map that identifies the exact location of each Wireless Installation in or on the Structures and Infrastructure. That information must be provided in a format that is compatible with Licensor's information technology, including but not limited to ESRI compatible GIS shapefiles.

6.3 No Liens. Licensee will not allow to exist any lien with respect to any Structure or Infrastructure or other Licensor property or facility resulting from any work performed by or on behalf of Licensee pursuant to this Agreement, or any act or claim against Licensee or any of its contractors, agents, or customers. Licensee will, at its sole expense, promptly bond or otherwise discharge any such lien within thirty (30) days of receipt of written notice from Licensor of the existence of such lien.

6.4 Worker Qualifications; Responsibility for Agents and Contractors. Licensee shall ensure that its employees, agents or contractors which perform work in furtherance of this Agreement are adequately trained and skilled to access Structures and Infrastructure in accordance with all applicable industry and governmental standards and regulations.

**7. UTILITIES.** Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with Wireless Installations. Licensee has no right to utilize Licensor's electrical service serving Licensor's Structure or Infrastructure without Licensor's prior written consent; provided, however, that if Licensor allows Licensee to utilize Licensor's electrical service serving Licensor's Structure or Infrastructure for a particular Wireless Installation, then commencing on the first (1<sup>st</sup>) day of the month following the date that Licensee first utilizes Licensor's electrical service to provide power for the Wireless Installation, Licensee shall pay to Licensor a utility usage fee set forth in the applicable Site License Supplement until such use is discontinued by Licensee. Additionally, Licensee may, at Licensee's sole cost, replace existing lighting on a Structure utilized by Licensee either with LED or other form of energy saving lighting design if approved in writing by Licensor, and Licensor will own, operate, maintain and repair the replacement lighting.

## 8. OPERATION AND MAINTENANCE

8.1. RF Emissions. Licensee's operation of its Wireless Installations will comply with all FCC regulations regarding RF emissions and exposure limitations. Licensee is allowed to install signage and other mitigation, such as a power cut-off switch on Structures, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an Emergency, Licensor's authorized field personnel will contact Licensee's designated point of contact with reasonable advance notice, but in no event less than one (1) business day in advance, to inform Licensee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an Emergency, the power-down will be with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Licensee's Wireless Installations and agree to limit the frequency of power-downs and to restore power as promptly as much as reasonably possible.



## 8.2 Interference.

(a) Licensee will operate its Wireless Installations in accordance with Laws and industry standards and in compliance with all FCC regulations regarding Interference with the radio signal transmissions of Licenser and other third parties in or upon a Structure, which transmissions are operated in compliance with Laws. Licensee will not knowingly, nor will Licensee knowingly permit its employees, tenants, licensees, invitees, agents or independent contractors to cause Interference with Licenser's Structures or Infrastructure, Licenser's use of the Structure or Infrastructure, or Licenser's ability to comply with the terms and conditions of this Agreement. If Licenser reasonably determines that Interference is occurring, then Licensee will meet and confer with Licenser within five (5) days of Licensee's receipt of written notice of Interference from Licenser, and otherwise diligently work in good faith with Licenser to determine the root cause of the Interference and to develop workable solutions to resolve the Interference in a mutually acceptable manner.

(b) Licenser will not grant after the date of this Agreement a permit, license or any other right to any third party if, at the time such third party applies to use a Structure or Infrastructure, Licenser knows or has reason to know that such third party's use may cause Interference with the Licensee's existing Wireless Installations, Licensee's use of the Structure or Infrastructure, or Licensee's ability to comply with the terms and conditions of this Agreement.

(c) Licenser will not knowingly, nor will Licenser knowingly permit its employees, tenants, licensees, invitees, agents or independent contractors to cause Interference with Licensee's existing Wireless Installations, Licensee's use of the Structure or Infrastructure, or Licensee's ability to comply with the terms and conditions of this Agreement. If Licensee reasonably determines that Interference is occurring, then Licenser will meet and confer with Licensee within five (5) days of Licenser's receipt of written notice of Interference from Licensee, and otherwise diligently work in good faith with Licensee to determine the root cause of the Interference and to develop workable solutions to resolve the Interference in a mutually acceptable manner.

8.3 Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Licenser Structure or Infrastructure or the public rights-of-way in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licenser, Licensee will pay, indemnify, defend and hold Licenser harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance by Licensee or on Licensee's behalf will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

8.4 Safety Inspection. Licenser also reserves the right to conduct inspections of Wireless Installations on Licenser's Structures and Infrastructure and to conduct inspections in the vicinity of Licensee's Wireless Installations. Except in circumstances where Licenser has special reason to be concerned about potential violations that will likely result in immediate danger or injury, or in case of an Emergency, Licenser will give Licensee sixty (60) days' prior written notice of such inspections and Licensee shall have the right to be present at and observe any such inspections. Licensee shall pay Licenser for its reasonable costs for safety inspections performed for the purpose of determining if a safety violation of which Licenser has provided prior written notice to Licensee has been corrected by Licensee.

## 9. RELOCATION AND ABANDONMENT

9.1 Relocation for Public Improvement Projects. In the event Licenser desires to replace, relocate, modify, demolish, or in any way alter the Structure and/or Infrastructure in connection with a Public Improvement Project in a manner likely to cause Interference with Licensee's Wireless Installation, Licenser shall have the right to cause Licensee to relocate the Wireless Installation subject to the terms and

conditions set forth herein; provided, however, Licensor shall use reasonable efforts to fully accommodate Licensee's continuing use of the Structure and/or Infrastructure as the case may be, without relocation if it is reasonably possible to do so.

(a) Relocation. If the Public Improvement Project requires Licensee to relocate its Wireless Installation from all or any portion of the Structure and/or Infrastructure, Licensor shall have the right to require Licensee to relocate the Licensed Site upon the following terms and conditions: (i) Licensor shall deliver to Licensee a Relocation Notice to relocate the Wireless Installation; (ii) Licensee and Licensor shall mutually identify a suitable Relocation Licensed Site to ensure that the Relocation Licensed Site provides substantially similar signal coverage for the Wireless Installation as that of the Licensed Site being relocated; (iii) such relocation will be performed exclusively by Licensee at its sole cost and expense; (iv) the Parties shall cooperate to the extent possible to assure continuity of service for Licensee's Wireless Installation during any relocation and (v) Licensee shall have the right to operate a temporary cell site if feasible in a mutually agreeable location in the vicinity of the Licensed Site during such relocation with no additional Fee due to Licensor under this Agreement; provided that Licensee also obtains all applicable permits and pays all applicable permit fees. Licensee shall not be required to pay any additional application, review or other Licensor fees under this Agreement in connection with any relocation initiated by Licensor. If in Licensee's reasonable judgment no suitable Relocation Licensed Site can be found, then Licensee shall have the right to terminate the applicable Site License Supplement for which Licensor is requiring relocation upon written notice to Licensor, and without penalty or further obligation, except the obligation to remove the affected Wireless Installation and pay any sums due.

(b) Relocation In The Event of An Emergency. Notwithstanding Section 9.1(a) above, in the event of an Emergency, Licensor will endeavor to provide as much notice to Licensee for the relocation of the Wireless Installation as warranted by the circumstances pertaining to the Emergency.

9.2 Abandonment by Licensor. If Licensor determines to Abandon any Structure and/or Infrastructure and Licensor so determines that the Structure and/or Infrastructure does not need to be permanently removed, then Licensor shall give Licensee ninety (90) days' prior written notice of Licensor's intent to Abandon the Structure or Infrastructure, as the case may be. Within such time, Licensee may (a) remove or otherwise dispose of its Wireless Installations at which time the Site License Agreement shall automatically terminate without further liability to Licensee, or (b) elect to acquire title to the Structure and/or Infrastructure at no cost to Licensee in "as is, where is" condition. If Licensee elects to acquire title, then Licensor shall promptly execute and deliver a bill of sale and assignment transferring the Structure and/or Infrastructure to Licensee in "as is, where is" condition subject only to Licensor's representation and warranty that Licensor is the sole owner, and Licensor owns the Structure or Infrastructure, as the case may be, free and clear of any liens, leases, licenses or other third-party rights or encumbrances. Licensee shall be under no obligation to provide, maintain or repair lighting or any other public service on any Structure or Infrastructure which Licensee may elect to acquire title from Licensor.

9.3 Abandonment by Licensee. Whenever a Wireless Installation is abandoned, Licensee shall within thirty (30) days after such abandonment file a statement in writing with the Licensor, including a detailed description of the Wireless Installation's location, including a map and/or plans. If the Wireless Installation is not put into use within one (1) year from the date of final inspection or is put into use but then not used for twenty-four (24) consecutive months, the Wireless Installation shall be deemed abandoned. Upon such abandonment by Licensee, Licensor may require the Wireless Installation to be removed by Licensee at its own expense or at Licensor's discretion, all or part of the Wireless Installation may be abandoned in place with ownership deemed to be transferred to and vested in Licensor at no cost. Licensee shall execute such documents of title as will convey all right, title and interest in the Wireless Installation to Licensor in its "as-is" condition without representation or warranty as to its condition or fitness for a particular purpose.

## 10. INSURANCE

10.1 Certificate of Insurance. Licensee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Licensee agrees to procure the



required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to a Licensor a Certificate of Insurance evidencing the types of insurance and policy limits required, in a form acceptable by the City Manager, whose approval shall not be unreasonably withheld.

#### 10.2 Required Insurance.

(a) Workers' Compensation and Employer's Liability insurance, as required by statute, with Employer's Liability limits of \$1,000,000 each accident, \$1,000,000 by disease policy limits, and \$1,000,000 by disease each employee. To the extent allowed by Laws, the policy must include a blanket waiver of subrogation in favor of Licensor.

(b) Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

\$4,000,000 General Aggregate Limit

\$2,000,000 Each Occurrence

\$2,000,000 Each Occurrence - Personal Injury and Advertising Injury

\$2,000,000 Products/Completed Operations Aggregate Limit

(c) Commercial Automobile Liability insurance with limits of \$1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.

(d) Environmental Liability Insurance with a limit of \$2,000,000 for each occurrence, including coverage for sudden and accidental pollution arising out of handling hazardous materials or wastes, non-hazardous materials or waste, that, when released into the environment, violate federal, state, or local regulatory standards.

(e) The required liability insurance except workers compensation and employer's liability must include Licensor and its elected/appointed officials, departments, employees, representatives and agents as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of Licensor. Any insurance and/or self-insurance maintained by the City or its elected/appointed officials, departments, employees, agents and representatives shall not contribute with the Licensee's insurance or benefit the Licensee in any way.

(f) The insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to limits of the insurer's liability. The insurance shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and shall not operate to increase the limits of the company's liability.

(g) Licensee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance.

10.3 Notice of Cancellation. Licensee shall provide at least thirty (30) days advance written notice of cancellation or non-renewal of any required insurance that is not replaced. Notwithstanding the foregoing, Licensee may self-insure the required insurance under the same terms and conditions as outlined above.

10.4 Licensee's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

10.5 If Licensee, for any reason, fails to obtain or maintain insurance coverage as required by this Agreement or fails to furnish the Certificates, such failure shall be deemed a material breach of this Agreement. The Licensor, at its sole discretion, may terminate this Agreement and obtain damages from Licensee resulting from such breach. This remedy shall be in addition to any other remedies available for the Licensor.

**11. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF SUCH PARTY OR ANY OTHER PERSON, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, EXCEPT THAT THE EXPRESS INDEMNIFICATION OBLIGATIONS MADE BY LICENSEE IN SECTION 12 OF THIS AGREEMENT SHALL STILL APPLY.**

**12. INDEMNIFICATION, WAIVER AND RELEASE OF CLAIMS**

**12.1 Indemnification By Licensee.** To the extent permitted by Laws, Licensee shall indemnify, hold harmless and, at Licensors sole option, defend Licensor Indemnitees, and each of them, from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensor Indemnitees, or any of them, may incur, asserted by third parties against Licensor Indemnitees, or any of them, to the extent arising out of Licensee's negligent installation, operation, use, repair, or removal of Wireless Installations or breach of the terms of this Agreement by Licensee, including acts or omissions by its agents, contractors, or subcontractors, while acting on behalf of Licensee except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensor Indemnitees, or any of them.

**12.2 Waiver and Release.** Licensee waives any and all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage or injury to any Wireless Installations or any loss or degradation of the services as a result of an event or occurrence which is beyond the reasonable control of the Licensor. Licensee and its affiliates, predecessors, successors, assigns, officers, directors, employees, agents, attorneys, consultants and volunteers voluntarily and knowingly release and forever discharge the Licensor and its employees, consultants, officers, officials, agents and successors in interest ("Releasees") from any and all claims, demands, causes of action, damages, liabilities and obligations: a) for injury to or death of Licensee or its respective officers, employees or agents or to damage to property of Licensee pursuant to entry by Licensee upon the Licensor's public rights-of-way and use of Licensor's Structures and Infrastructure, performance of this Agreement or any subsequently issued encroachment permit except to the extent arising out of the gross negligence or willful misconduct of Licensor or the Releasees; b) arising from the termination of any right to be in the public rights-of-way and use of Licensor's Structures and Infrastructure or termination or transfer of Licensee's ownership of the Wireless Installations, resulting from the act of a third party or termination of the Agreement by City in accordance with this Agreement, including without limitation claims for inverse condemnation, precondemnation damages, eminent domain, improvements within the public right-of-way, unreasonable preacquisition activity, loss of goodwill, bonus value of the Wireless Installations, interest, attorney fees, expert witness fees, court costs and any and all other expenses which may have been payable to Licensee, including relocation assistance benefits which may arise by reason of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the California Government Code, Article 9 of Chapter 4 of Division 24 of the California Health and Safety code and federal requirements titled as "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Public Law 91-646), as amended, and any and all regulations promulgated thereunder (the "Relocation Laws") or by reason of any law or regulation of the United States of America, the State of California, or the City of Emeryville. Licensee understands and agrees that this release fully and finally releases the Releasees from all unknown and unanticipated injuries, losses, or damages, arising out of the claims released hereby. Licensee does further hereby waive all rights and benefits of Section 542 of the Civil Code of the State of California which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his favor at the time of executing the release, and that if known by him would have materially affected his settlement with the debtor or released party.**

**12.3 Limitation of the Licensor's Liability.** Except as provided for in this Section, the Licensor shall be liable only for the cost of repair to damaged Wireless Installations arising from the gross negligence

or willful misconduct of the Licensor, its council or board members, officers, elected trustees, employees, agents, or contractors.

12.4 No Liability for Public Work. None of the Licensor, its officers, agents, servants, employees, attorneys, consultants or independent contractors shall have any liability to the Licensee for any damage as a result of or in connection with the protection, , movement, removal, alteration, or relocation of any part of the Wireless Installations by or on behalf of the Licensee or the Licensor in connection with any emergency, public work, public improvement, alteration of any Licensor Structures and Infrastructure, or other municipal structure, any change in the grade or line of any public right-of-way, or the elimination, discontinuation, closing or demapping of any public right-of-way or any Licensor Structures and Infrastructure, except to the extent arising out of the gross negligence or willful misconduct of Licensor, its officers, employees, agents or contractors. When reasonably possible, the Licensee shall be consulted prior to any such activity but the Licensor shall have no liability to the Licensee, except as provided herein, in the event it does not so consult the Licensee. All costs to repair or replace the Wireless Installations, or parts thereof, damaged or removed as a result of such activity, shall be borne by the Licensee, provided, however, that the foregoing obligation of the Licensee pursuant to this Section shall not apply to any liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses arising out of any willful misconduct or negligence of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

### 13. DEFAULT AND TERMINATION

13.1 Licensee's Default and Licensor's Remedies. If Licensee does not cure its Default, then thereafter Licensor may elect any of the following remedies:

- (a) suspend Licensee's access to the Structure or Infrastructure to which the Default pertains;
- (b) terminate the specific Site License Supplement(s) or affected portion thereof covering the Structure(s) or Infrastructure to which the Default pertains or the Agreement;
- (c) require Licensee's obligation to which the Default has been declared to be specifically performed; or
- (d) maintain an action at law against Licensee for damages directly incurred by Licensor arising directly from Licensee's uncured Default.

13.2 Licensor's Default and Licensee's Remedies. If Licensor does not cure its Default, then thereafter, Licensee may elect to (a) pursue any rights or remedies available to Licensee at law or in equity; (b) terminate the specific Site License Supplement(s) or affected portion thereof covering the Wireless Installation to which the Default pertains; and/or (c) require Licensor's obligation to which the Default has been declared to be specifically performed.

#### 13.3 Voluntary Termination of Site License Supplement.

(a) A Site License Supplement may be terminated by Licensee for any reason or no reason, and without further liability to Licensee, at any time prior to the Commencement Date effective upon written notice to Licensor.

(b) A Site License Supplement may be terminated by Licensee after the Commencement Date for any reason or no reason effective upon the later of (i) thirty (30) days following written notice to Licensor and (ii) the date of removal of the Wireless Installation, as long as Licensee pays Licensor, all Fees owed for the period until the effective date of the termination, plus a termination fee equal Twenty-Five Percent (25%) of the Fee, at the then-current rate. Notwithstanding the foregoing, no such termination fee will be payable on account of the termination of a Site License Supplement by Licensee under any termination provision contained in any other Section of this Agreement, including the following: Section 9.1(a), 9.2, 13.2, 13.3(a) or 14. Additionally, in the event Licensee has paid a Fee to Licensor for the use of the Licensed Site, then Licensor shall have the right to retain the already paid Fee without refund or other credit to Licensee.



**14. CASUALTY.** In the event of damage to a Structure and/or Infrastructure due to a Casualty Event that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which Licensor elects not to repair, or if such Casualty Event is reasonably be expected to disrupt Licensee's operations on the Structure and/or Infrastructure, for more than forty-five (45) days, then Licensee may, at any time following such Casualty Event; (i) terminate the applicable Site License Supplement or affected portion thereof upon fifteen (15) days' written notice to Licensor; (ii) place a temporary facility, if feasible and approved in writing by Licensor, at a location equivalent to Licensee's current use of the Structure and/or Infrastructure, as the case may be, until such time as the Structure and/or Infrastructure is restored and the Wireless Installation is returned to full on-air operation in the ordinary course of Licensee's business; provided that Licensee also obtains all applicable permits and pays all applicable permit fees; or (iii) submit a new Site License Application for an alternate location equivalent to Licensee's current use of the Structure and/or Infrastructure, in which case if the alternative location is approved by Licensor, Licensor shall waive the application fee and transfer all remaining rights to the new Structure and Infrastructure, as the case may be, as long as such relocation was due to a Casualty Event not caused by Licensee. Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof.

## **15. MISCELLANEOUS PROVISIONS**

15.1 Notices. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the Parties as follows:

<b>If to Licensee (including invoices):</b>  New Cingular Wireless PCS, LLC Attn: Tower Asset Group – Lease Administration Re: Wireless Installation on Public Structures (City of Emeryville) (CA) 1025 Lenox Park Blvd. NE 3 <sup>rd</sup> Floor Atlanta, GA 30319	<b>If to Licensor:</b>  City of Emeryville Attn: Public Works Director 1333 Park Avenue Emeryville, CA 94608
<b>With a copy to:</b>  New Cingular Wireless PCS, LLC Attn: Legal Dept. - Network Operations Re: Wireless Installation on Public Structures (City of Emeryville) (CA) 208 S. Akard Street Dallas, TX 75202-4206	<b>With a copy to:</b>  City of Emeryville Attn: City Attorney 1333 Park Avenue Emeryville, CA 94608

### **Contact Number for day to day operation:**

**Licensor:** 1-510-596-4300 (business hours); 1-510-596-3700 (non-emergency police dispatch for after hours)

**Licensee:** 1-800-2646620

Licensee's contact number shall be a twenty-four (24) hour Emergency telephone number at which a representative of the Licensee, not voice mail or a recording, can be contacted in the event of an emergency. The Licensee shall respond within twenty-four (24) hours to address the reported Emergency.

Any Party may change its address or other contact information at any time by giving the other Party, and Persons named above, written notice of said change.

15.2 Force Majeure. Time periods for performance under this Agreement shall be deemed extended day for day for time lost attributable to any delay resulting from any Event of Force Majeure.

15.3 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties. Except as otherwise provided in this Agreement, Licensee shall not assign this Agreement or any of its rights or obligations to any firm, corporation, individual, or other entity, without the written consent of the Licensor, which consent shall not be unreasonably withheld. No sublicenses are permitted. Notwithstanding the foregoing, upon thirty (30) days' written notice, and without the need for Licensor's consent, which shall not be unreasonably withheld or delayed, Licensee may assign this Agreement or its rights or obligations to (a) an Affiliate or (b) in connection with the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the Structures are located.

15.4 Compliance with Laws. Licensee and Licensor agree to comply with all Laws.

15.5 Applicable Law. This Agreement shall be interpreted, construed, and enforced, in accordance with the laws of the state of California without regard to its conflict of laws principles, and, where applicable, federal law. If suit is brought by a Party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California with venue in Alameda County or in the United States District Court for the Northern District of California.

15.6 Waiver of Jury Trial. Each Party waives its right to a trial by jury on disputes arising from this Agreement.

15.7 NO WARRANTY. THERE ARE NO WARRANTIES UNDER THIS AGREEMENT EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH HEREIN. LICENSOR SPECIFICALLY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WITH RESPECT TO THE PHYSICAL, STRUCTURAL, OR ENVIRONMENTAL CONDITION OF THE LICENSOR'S STRUCTURES AND INFRASTRUCTURE. LICENSEE ACCEPTS ANY STRUCTURE AND INFRASTRUCTURE IDENTIFIED IN ANY APPROVED SITE LICENSE SUPPLEMENT, IN ITS "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY LICENSOR, OR ANY LICENSOR OFFICER, AGENT, OR EMPLOYEE AS TO THE PRESENT OR FUTURE CONDITION OF OR SUITABILITY OF THE STRUCTURE AND INFRASTRUCTURE FOR LICENSEE'S INTENDED USE, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THE USE OF THE LICENSOR'S STRUCTURE AND INFRASTRUCTURE FOR LICENSEE'S INTENDED PURPOSE IN EFFECT ON THE DATE THAT THE APPLICABLE PERMITS OR AUTHORIZATIONS ARE ISSUED FOR THE APPLICABLE WIRELESS INSTALLATION. LICENSEE IS SOLELY RESPONSIBLE FOR INVESTIGATION AND DETERMINATION OF THE CONDITION AND SUITABILITY OF ANY STRUCTURE AND INFRASTRUCTURE FOR LICENSEE'S INTENDED USE.

15.8 Exhibits. In the event of any inconsistency between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such incorporated Exhibits unless such Exhibit specifies otherwise.

15.9 Waiver; Severability. No provision of this Agreement may be waived except in a writing signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision. If any portion of this Agreement is found to be

unenforceable, the remaining portions shall remain in effect, and the Parties shall begin negotiations for a replacement of the invalid or unenforceable portion.

15.10 Survival. The terms and provisions of this Agreement that by their nature require performance by either Party after the termination or expiration of this Agreement, shall be and remain enforceable notwithstanding such termination or expiration of this Agreement for any reason whatsoever.

15.11 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensor with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those contained herein. This Agreement may not be amended or modified orally, but only by an agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.

15.12 Execution in Counterparts. This Agreement may be executed in multiple counterparts, including by counterpart facsimiles or scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

15.13 Taxes. Licensee shall be responsible for payment of all fees and taxes charged in connection with the right, title and interest in and construction, installation, maintenance and operation of Wireless Installation for the purposes set forth above, including but not limited to the following:

- (a) Utility Users Tax. Licensee agrees to cooperate and provide information to Licensor and its consultant for purposes of determining the application and collection of Licensor's Utility Users Tax.
- (b) Business License. Licensee shall obtain a business license from the City of Emeryville and pay the applicable business license tax.
- (c) Possessory Interest Tax. If the existence of Licensee's Wireless Installations is subject to possessory interest tax imposed by the City or County of Alameda, California, Licensee shall be responsible for any such tax.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

**CITY OF EMERYVILLE**

**NEW CINGULAR WIRELESS PCS, LLC**

**By: AT&T Mobility Corporation**

**Its: Manager**

By: \_\_\_\_\_

By:  \_\_\_\_\_

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

Name: \_\_\_\_\_ **Vani Muller** \_\_\_\_\_

**Manager**

Its: \_\_\_\_\_

Its: **Real Estate & Construction** \_\_\_\_\_

Date: \_\_\_\_\_

Date: **4/22/20** \_\_\_\_\_

**EXHIBIT 1**  
**DEFINED TERMS**

As used herein, the following capitalized terms in the Agreement have the meaning ascribed to them below.

“Abandon” means to permanently relinquish ownership of a Structure and/or Infrastructure in its then existing location.

“Acknowledgment” means a written memorandum signed by the Parties confirming the Commencement Date of the Site License Supplement and the date of expiration of the Agreement in a form substantially similar to Exhibit 4, attached hereto.

“Affiliate” means any entity that controls, is controlled by, or is under common control with Licensee.

“Casualty Event” means any casualty, fire, act of God, or other harm affecting a Structure and/or Infrastructure licensed in whole or in part to Licensee pursuant to a Site License Agreement.

“Commencement Date” means the first day of the month following the day Licensor approves a Site License Supplement for the Wireless Installation at a particular location.

“Days” means calendar days. If deadline or other date falls on a non-business day (including weekends, holidays recognized by the federal government, and holidays recognized by the state where the Structure is located), that date shall be extended to the next business day.

“Default” means the failure by a Party to perform any material term of condition of this Agreement where such failure continues for a period of more than sixty (60) days after receipt of written notice from the other Party of such failure identified with reasonable specificity as to the material term or condition of this Agreement which the Party is alleged to have failed to perform. Notwithstanding the foregoing, no Default will be deemed to exist if a Party has commenced to cure the alleged failure to perform within such sixty (60) day period, and thereafter such efforts are prosecuted to completion with reasonable diligence. Delay in curing an alleged failure to perform will be excused if due to causes beyond the reasonable control of the Party against whom the failure to perform has been alleged.

“Effective Date” means the latest date in the signature blocks in the Agreement.

“Emergency” means a situation in which there is an imminent threat of injury to person or property, or loss of life.

“Event of Force Majeure” means any act of God, strike, civil riot, fire, flood, material or labor shortage, restriction by governmental authority, and any other cause not within the reasonable control of the Party whose performance is required under the Agreement.

“FCC” means the Federal Communications Commission.

“Fee” means the annual payment for Licensee’s Permitted Use of the Structure and Infrastructure at the Licensed Site as described in Section 3.

“Hazardous Substance” means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

“Holdover Term” means a month to month term following the termination of a Site License Supplement.

“Infrastructure” means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication services to a Structure or otherwise located in the public right of way or other location controlled or owned by Licensor.

“Interference” means as the case may be, any material and adverse physical obstruction or impairment with the radio signals or operation of Licensee’s Wireless Installation utilizing a Structure or Infrastructure authorized to be used by Licensee pursuant to Site License Agreement, or any material and adverse physical obstruction or impairment with the radio signals or operation of Licensor’s Structure or Infrastructure authorized to be used by Licensee pursuant to Site License Agreement.

“Laws” means all federal, state and local laws, orders, rules and regulations applicable to Licensee’s use of the Wireless Installation on the Structure and/or Infrastructure and Licensor’s ownership and use of the Structure and Infrastructure in the public right of way, as the case may be.

“Licensed Site” means the space on or in Licensor’s Structures and Infrastructure as described or depicted in a Site License Agreement or Supplement.

“Licensee Indemnitees” means Licensee, its employees, affiliates, officers, directors, successors and assigns.

“Licensor Indemnitees” means Licensor, its officers, officials and employees, successors and assigns.

“Make Ready Work” means the work required on, in or to Licensor’s Structure and/or Infrastructure to accommodate Licensee’s Wireless Installation, including relocating, replacing, upgrading and/or reinforcing the existing Structure or Infrastructure.

“NEC” means the National Electric Code.

“NESC” means the National Electrical Safety Code.

“Person” or “Persons” means any person or entity;

“Party” means individually Licensor and Licensee.

“Parties” means Licensor and Licensee collectively.

“Permitted Use” means the transmission and reception of communications signals for the provision of personal wireless services and mobile data services, and the installation, construction, modification, maintenance, operation, repair, replacement and upgrade of the Wireless Installation to provide such services.

“Public Improvement Project” means any construction or expansion of roads, streets, sidewalks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other capital improvement project within Licensor’s jurisdiction undertaken by or on behalf of Licensor or another governmental entity or public agency. Public Improvement Project does not include work undertaken for the benefit of a non-governmental entity, even if such work is performed by Licensor.

“Relocation Licensed Site” means an alternate Licensed Site on a Structure and/or Infrastructure, as the case may be, where Licensor may relocate its Wireless Installation pursuant to a Relocation Notice.

“Relocation Notice” means a written notice delivered to Licensee at least six (6) months prior to the date of Licensor’s desired relocation deadline.

“RF” means radio frequency.

“Safety Codes” means collectively the NEC, NESC, and any and all other applicable regulatory codes for safe practices when performing work on or near a Structure and/or Infrastructure.

“Site License Supplement” means the Site License Supplement attached as Exhibit 3.

“Site License Application” means an application by Licensee to use a Licensed Site in the form attached as Exhibit 2.



“Site License Supplement Term” means the period from the Commencement Date of a Site License Supplement to the earlier the termination of the Agreement or the termination of the Site License Supplement.

“Structure” means City-owned streetlights, traffic signals, flags, banners, signage, refuse receptacles, poles, fixtures or any other similar improvement(s) capable of accommodating a Wireless Installation within the City public right-of-way, which right-of-way is owned, managed, or controlled by the City.

“Technical Grounds” means, in light of prevailing industry engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable Laws.

“Term” means ten years from the Effective Date.

“Wireless Installation” means antennas, communications equipment, electric and communications cables, and related accessories and improvements, including facilities that operate on FCC-approved frequencies in the bands authorized for commercial wireless communication services pursuant to FCC licenses issued to Licensee, and all associated equipment, located in, under, upon, adjacent to or through a Structure or Infrastructure owned or controlled by Licensor pursuant to a Site License Supplement (in accordance with Section 4.2 hereof) approved in writing by Licensor.

									<b><u>Equipment Owner</u></b>				<b><u>Applicant (if different than Equipment Owner)</u></b>
Application Date:						Name:				Name:			
Site Name/Project #:						Address:				Address:			
						Contact Name:				Contact Name:			
Approved by:						Phone #:				Phone #:			
Date:										Email:			

Approval of this application does not constitute as the permitting, approval of the Wireless Installation; a separate application for permitting is required for construction and operation.

## WIRELESS INSTALLATION - ATTACHMENT TO EXISTING STRUCTURE

Structure Pole #	Location/GPS Coordinates		Antenna Grade (Highest Point)	Antenna Dimensions (HxWxD)	Equipment Weight	Transmit Frequency	Receive Frequency	Output Power Level
	LAT	LONG						
Notes:								

Structure Pole #		Location/GPS Coordinates		Antenna Grade (Highest Point)	Antenna Dimensions (HxWxD)	Equipment Weight	Transmit Frequency	Receive Frequency	Output Power Level
		LAT	LONG						
Existing									
New									
Existing									
New									
Existing									
New									
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New									
Existing									
New									
Existing									
New									
Notes:									



**EXHIBIT 3**  
**FORM OF SITE LICENSE SUPPLEMENT**

This Site License Supplement, is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ [name of City/Town/Village/County/etc.] ("Licensor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee").

1. License Agreement for Wireless Installations on Public Structures. This Site License Supplement as referenced in that certain License Agreement for Wireless Installations On Public Structures, between Licensor and Licensee dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). Licensee has submitted a Site License Application pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site License Supplement, and subject to all of the terms and conditions of the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site License Supplement, the terms of this Site License Supplement shall govern. Capitalized terms used in this Site License Supplement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensee shall have the right to install and attach Wireless Installations on, under, and above the public right of way owned or controlled by Licensor, on, in and adjacent to the specific Structure and Infrastructure as identified and described in Exhibit 1 attached hereto (collectively the "Licensed Site").

3. Term. The Site License Term of this Site License Supplement shall be as set forth in Section 2 of the Agreement.

4. Fee. The Fee shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Section 3 of the Agreement.

5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

LICENSOR:

CITY OF EMERYVILLE

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

LICENSEE:  
company

New Cingular Wireless PCS, LLC, a Delaware limited liability

By: AT&T Mobility Corporation

Its: Manager

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**EXHIBITS**

**1**      Licensed Site, Wireless Installation Equipment List and Plans

## **EXHIBIT 1 TO SITE LICENSE SUPPLEMENT**

### **Licensed Site, Wireless Installation Equipment List and Plans**

Licensee Wireless Installation Reference: [LICENSEE TO COMPLETE]

FA / USID: \_\_\_\_\_

Site Name: \_\_\_\_\_

PTN / PACE: \_\_\_\_\_

Structure pole number: [LICENSOR TO COMPLETE]

Structure Latitude and Longitude (Approximate): [LICENSEE TO COMPLETE]

Wireless Installation Equipment List: [LICENSEE TO COMPLETE]

Wireless Installation Plans: See the attached plan set dated \_\_\_\_\_ 20\_\_ prepared by \_\_\_\_\_ consisting of (\_\_\_\_) page(s).

**EXHIBIT 4**

**FORM OF ACKNOWLEDGMENT**

Date:

City of Emeryville  
Attn: Public Works Director  
1333 Park Avenue  
Emeryville, CA 94608

RE: Acknowledgment of Commencement Date, Site License Supplement No. \_\_\_\_\_,  
between New Cingular Wireless PCS, LLC and the City of Emeryville for Licensed Site located  
at \_\_\_\_\_.

Dear Public Works Director:

This letter will confirm that for all purposes of the Site License Supplement, the Commencement  
Date for payment of the License Fee is \_\_\_\_\_ 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter to  
\_\_\_\_\_.

Accepted and Agreed

By: \_\_\_\_\_

Dated: \_\_\_\_\_