

CITY OF WARRENVILLE

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement ("*License Agreement*" or "*Agreement*") is made as of _____, 20____, ("*Effective Date*") by and between the City of Warrenville, an Illinois home rule municipal corporation, ("*City*") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("*Licensee*").

W I T N E S S E T H:

WHEREAS, the Licensee desires to install, operate, and maintain one or more small wireless facilities ("*SWFs*") on certain City-owned utility poles, wireless support structures, and real property (each a "*City Facility*" and collectively "*City Facilities*"); and

WHEREAS, the Licensee filed an application for a permit for certain SWFs the Licensee desires to install on a City Facility, and the City has approved and issued a permit for certain SWFs described in this License Agreement; and

WHEREAS, the Licensee may file additional applications for City approval of SWFs on City Facilities; and

WHEREAS, the City and Licensee (collectively the "*Parties*") desire to enter into this Agreement to establish the terms and conditions for installation, operation, and maintenance on City Facilities of SWFs for which the City has issued a permit; and

WHEREAS, the Parties agree that this Agreement does not provide exclusive use of City Facilities to the Licensee, and the terms of this Agreement are nondiscriminatory, competitively neutral, and commercially reasonable;

NOW, THEREFORE, in consideration of the recitals and the provisions of this Agreement, the Parties agree as follows:

Section 1. Recitals. The foregoing recitals are incorporated in this Agreement by this reference as though fully stated herein.

Section 2. Defined Terms. The capitalized terms in this Agreement that are defined in Section 2 of the Illinois Small Wireless Facilities Deployment Act, 50 ILCS 840/10 ("*State Act*") or in Chapter 5 of Title 7 of the Warrenville City Code ("*City Code*") have the meaning provided in the State Act or City Code, respectively.

Section 3. Grant of License; Access. The City grants a License to the Licensee for space on a City Facility for each approved SWF and its associated equipment (collectively a "*Wireless Facility*" as defined in the State Act) described in an Identification Sheet attached to the "Schedule of Approved Wireless Facilities" attached to this License Agreement. The License authorizes non-exclusive access of the Licensee over public property to each City Facility for installation, operation, maintenance, repair, and modification of each Wireless Facility.

Section 4. Term of License Agreement. This License Agreement commences on the Effective Date. This License Agreement expires as to a SWF and Wireless Facility concurrently with the expiration of the permit granted by the City for the SWF, except that this License Agreement will renew automatically as to the SWF and Wireless Facility to match any extended term of the permit or the term of a subsequent permit for the particular SWF and Wireless Facility.

Section 5. Schedule of Approved Wireless Facilities. Each Approved Wireless Facility must be identified and described on the Schedule of Approved Wireless Facilities attached to and by this reference incorporated into the License Agreement. The Schedule may be modified only pursuant to the provisions stated in the Schedule.

Section 6. Permit Application. For each SWF proposed to be located on a City Facility, the Licensee must submit an application to City as provided in Section 7-5-21.D of the City's Code of Ordinances (the "*Application Provisions*"). An application may include more than one SWF. The application must include all of the information required by the Application Provisions and the applicable application fee. Renewal of any permits issued will be subject to the applicable requirements of the State Act, if any.

Section 7. Use of City Facility. The Licensee's ability to use a City Facility is contingent on the Licensee obtaining all certificates, permits, and other approvals (collectively "*Governmental Approvals*") that are required by federal, State of Illinois, and local authorities that will permit the Licensee use of a City Facility, and a satisfactory building structural analysis provided by Licensee and approved by the City. In the event that (i) an application for Governmental Approvals is rejected, (ii) a Governmental Approval issued to the Licensee is canceled, expires, lapses, withdrawn, or terminated by the applicable governmental authority, and (iii) the Licensee determines that the Governmental Approval may not be obtained in a timely manner, the Licensee may terminate this License Agreement as to the proposed Wireless Facility by giving notice to the City pursuant to Section 19 of this Agreement. No refund of any previously paid rent or rates for that Facility shall be returned to the Licensee.

Section 8. Rent. Licensee shall pay rent to the City for each SWF in the amount established in Section 7-5-21.O of the City Code on an annual basis, in advance, on the day of the year on which installation of such SWF equipment commences (the "*Commencement Date*") and annually thereafter on each anniversary of the Commencement Date; provided, however, that the initial payment of such rent shall not be due until thirty (30) days after the Commencement Date.

Section 9. Operation and Maintenance Standards. Each SWF and Wireless Facility must meet all applicable operation and maintenance standards under State of Illinois law and City codes, including, without limitation:

(A) Continuing Compliance with Laws. The Licensee must comply at all times with (i) State of Illinois and City standards applicable to SWFs and Wireless Facilities and (ii) all City standards related to construction within public rights-of-way including, without limitation, wiring, cabling, grounding, utility pole extensions, and signage, except, in each case, to the extent preempted by federal or state laws or regulations. In the case of a conflict between federal laws and regulations, Illinois state laws and regulations and/or the City ordinances and standards, federal laws and regulations shall control over Illinois state laws and regulations, which will control over City ordinances and standards.

(B) Condition of Wireless Facility. The Licensee must install, maintain, repair, and modify its Wireless Facility to keep the Wireless Facility in good and safe condition in compliance with this Agreement.

(C) No Interference. The operation of a Wireless Facility must not interfere with the frequencies used by the City or any public safety agency for public safety communications. The Licensee must install Wireless Facilities of the type and frequency that will not cause unacceptable interference with any public safety agency's communications equipment. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference with public safety spectrum or any other spectrum licensed by a public safety agency. If a Wireless Facility causes such interference, and the Licensee has been given written notice of the interference by the public safety agency, then the Licensee must take all reasonable steps necessary, at its own expense, to eliminate the interference, including, without limitation, powering down the Wireless Facility and later powering up on an intermittent basis for testing, if necessary. The City may terminate a license and permit for a Wireless Facility based on such interference if the Licensee at any time fails to make a good faith effort to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC.

(D) Electricity and Communications Service. The following provisions apply to installation and maintenance of electricity and communications service to Wireless Facilities.

- (i) Installation. The Licensee may install electric and communications services sources to a Wireless Facility according to plans approved by the City and in compliance with all applicable city, state and federal requirements.
- (ii) Electrical and Telephone Service. The Licensee may connect its equipment to necessary electrical and telephone service, at the Licensee's expense. The Licensee shall coordinate with utility companies to provide separate service to the Licensee's Wireless Facility and notify the City if it is unable to do so. If the Licensee can obtain electrical service with a separate meter or another agreement with the utility company, then the Licensee must pay the utility directly for the Licensee's power consumption, if the service is billed directly by the utility. If a separate electrical service is not possible or practical under the circumstances, then the Licensee may use existing service, at the Licensee's expense, with the approval of City, which approval will not be unreasonably withheld. If the Licensee uses an existing utility service for a Wireless Facility, then the Parties either (i) will attempt to have a sub-meter installed at the Licensee's expense that monitors the Licensee's utility usage and for which the Licensee will be provided readings and bills for its usage from the utility company or the City or (ii) will provide for an additional fee for the Wireless Facility that will cover the Licensee's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Identification Sheet.
- (iii) Temporary Power Source. The Licensee may, at any time during the Term for a Wireless Facility, install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City.

The Licensee shall be permitted to connect the temporary power source to its equipment on the Premises in areas and manner approved by City.

(E) Replacement, Repair, Modification of Wireless Facility. The Licensee may replace, repair, and modify equipment, antennas, and conduits, or any portions of them and the frequencies over which the equipment operates, in conformance with the Identification Sheet.

(F) Height Limit. No element of a Wireless Facility may extend more than 10 feet above the height of the City Facility.

(G) Height Above Grade. All pole-mounted equipment for a Wireless Facility must be at least eight feet above the highest point of the grade of the ground within five feet of the City Facility.

(H) One Ground-Mounted Cabinet. Only one cabinet or other device for a Wireless Facility may be installed on the ground.

(I) Landscaping. All ground-mounted equipment must be screened by the Licensee with landscaping elements approved by the City.

(J) Paint Color. All antennas, mounting hardware, and other devices must be painted in a color that matches or is complementary (as determined by the City) to the City Facility structure.

(K) City Spacing Requirements. The Licensee must comply with applicable City spacing requirements concerning location of ground-mounted equipment in right-of-way.

(L) Private Party Contracts. The Licensee must comply with requirements in contracts between the City and private property owners concerning design or construction standards applicable to utility poles and ground-mounted equipment located in right-of-way.

(M) Undergrounding. The Licensee must comply with applicable City requirements concerning undergrounding.

(N) Specialized Poles. The Licensee must comply with the City's generally applicable written standards for decorative utility poles, and the City's standards regarding stealth, concealment, and aesthetic requirements governing occupiers of the rights-of-way, including in a historic district or regarding a historic landmark. Design and concealment measures are not considered a part of the Wireless Facility for purposes of the size restrictions on the Wireless Facility.

(O) Replacement of Pole Before Occupancy. If the City determines that applicable codes and standards require a utility pole or wireless support structure to be replaced before a collocation, then the City's approval may be conditioned on the replacement of the utility pole or wireless support structure, at the Licensee's cost.

(P) Abandonment and Removal. A Wireless Facility that is not operated for a continuous period of 12 months will be considered abandoned and the Licensee must remove the Wireless Facility within 90 days after receipt of written notice from City notifying the Licensee of the abandonment. The City will send the notice by certified or registered mail, return receipt requested to the last known address of the Licensee. If the Wireless

Facility is not removed within 90 days after the notice, then the City may remove or cause the removal of the Wireless Facility and charge all costs of the removal to the Licensee.

(Q) Sale or Transfer. The Licensee must provide written notice to the City of any intended sale or transfer of a Wireless Facility not less than 30 days prior to that sale or transfer. The notice must include the name and contact information of the wireless provider to which the sale or transfer is proposed. Licensee may not sell or transfer a Wireless Facility unless the buyer, transferee or assignee: (i) completes an information sheet to include with the buyer's, transferee's or assignee's Pole Attachment License Agreement with the City; or (ii) enters into an agreement with the City for that Facility.

(R) City Poles Maintenance. The City will keep its poles in good repair as required by federal, State of Illinois, and local laws. If the City does not keep a pole in good repair, then the Licensee may serve notice of disrepair on the City. If the City has not restored the pole to good repair within 60 days after notice from the Licensee, or such longer time as the City requires due to special circumstances and the City notifies the Licensee thereof, then the Licensee may discontinue paying the annual fee applicable to the affected poles, but only if the pole is no longer capable of being used for the purpose contemplated in this License Agreement and Licensee is not using the pole. In the event the Licensee would be allowed to discontinue payments of the annual fee pursuant to this Section but the Licensee has prepaid the annual fee, then the Licensee shall notify the City that it believes it is entitled to a credit against any prepaid annual fee payment for the amount of time in which the Licensee was unable to operate its Wireless Facility due to the disrepair continuing beyond the time periods provided for above in this Section. Such notice shall be given within fifteen (15) days after the commencement of the period for which Licensee believes it is entitled to such a credit. If the Licensee discontinues paying the annual fee pursuant to this paragraph, then the City may terminate this License Agreement as to that Wireless Facility. The Licensee agrees it has no remedy or recourse for the City's failure to comply with this paragraph other than such termination.

(S) Make-Ready Work. Make-ready work will be managed in accordance with the standards set forth in Subsection 15(i)(4) of the State Act.

(T) Pole Relocation, Removal, Replacement. If the City reasonably determines to remove, relocate, or replace a pole, then the City must notify the Licensee in writing at least ninety (90) days prior to the need to remove or relocate its Wireless Facility. In the event of an imminent threat to property or the health, safety, or welfare of the public (an "Emergency"), however, the City will provide as much notice to the Licensee as practical under the circumstances. The Licensee must remove the affected Wireless Facility from the pole within the ninety (90) day period or immediately in the case of an Emergency. The Licensee shall identify options for an alternative location for the affected Wireless Facility, and the City will work with the Licensee to identify a mutually agreeable location. The Licensee will be responsible for all costs related to the removal and relocation of the affected Wireless Facility. If a suitable alternate location cannot be found, then the Licensee may terminate this License Agreement as to the affected Wireless Facility by giving notice as required by this Agreement. If the affected Wireless Facility is relocated, then the Licensee must prepare an Identification Sheet for the alternate location, to be attached to the Schedule of Approved Wireless Facilities.

Section 10. Insurance. The Licensee must secure and maintain the following insurance: (i) all risk property insurance or self-insurance for its property's replacement cost,

(ii) workers' compensation insurance as required by law, and (iii) commercial general liability insurance with limits not less than required by Sections 7-5-21.R.10 and 7-5-8 of the City Code. The Licensee must cause the City to be included and endorsed as an additional insured on the commercial general liability policy and provide the additional insured certification and endorsement. The Licensee may self-insure all or a portion of the insurance coverage and limit requirements required by City. If the Licensee elects to self-insure it must provide the City evidence sufficient to demonstrate, to the reasonable satisfaction of the City, the Licensee's or Licensee's guarantor's financial ability to self-insure the coverage and limits required by City.

Section 11. Indemnification. The Licensee will indemnify and hold harmless the City against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of any City Facility or any City right-of-way associated with any City Facility by Licensee or its employees, or agents, contractors, arising out of the rights and privileges granted under this Agreement and the State Act. Notwithstanding the foregoing, Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. In addition, the Licensee hereby waives any claims for consequential, incidental, or special damages, however caused, based on the theory of liability, that the Licensee may have against the City relating to this Agreement or the Wireless Facilities.

Section 12. Casualty. In the event of damage to a City pole or City Facility by whatever cause that disrupts, or is reasonably expected to disrupt, the Licensee's operations at the City Facility for more than 45 days, the Licensee, at any time after the damage occurs, may terminate this License Agreement as to the affected Wireless Facility by giving the City written notice not less than 15 days prior to the termination. The Licensee may not terminate as provided in the previous sentence if the City has commenced repair of the damage and the repair is reasonable expected to be completed within the 45 day period.

Section 13. Licensee Ownership of Wireless Facility. The Wireless Facilities, including equipment, conduits, fixtures, and personal property, are the property of the Licensee, and the Licensee has the right and responsibility to remove the Wireless Facility in its entirety at any time during the Term, regardless of whether the Wireless Facility or any of its components are considered fixtures and attachments to real property under applicable law.

Section 14. Holdover. If the Licensee continues to occupy a City Facility beyond the date or time the Licensee is required to remove the Wireless Facility under any provision of this License Agreement (the "*Holdover Period*"), then the Licensee will be charged, and must pay, fees and rent at the rate of rent established by this License Agreement for the entire Holdover Period.

Section 15. Rights Secure If Sale. If at any time the City decides to sell or otherwise transfer all or any part of a City Facility that is subject to this License Agreement, then the sale or other transfer will be subject to the terms of this License Agreement and the related license and permit.

Section 16. Termination of License Agreement by Licensee. The Licensee may terminate this Agreement as to any Wireless Facility or in its entirety by written notice to the City specifying the date of termination and the date, not later than 45 days after service of

the notice, that all terminated Wireless Facilities will be removed from the City Facilities. All fees, rent, or other money paid to the City prior to the date of termination will be kept by the City. Unpaid fees, rent, or other money to be paid to the City will be prorated as appropriate through the date on which all terminated Wireless Facilities have been removed from City Facilities. All representations, warranties and indemnities provided by the Licensee shall survive the termination of this Agreement as a whole or as to any Wireless Facility.

Section 17. Termination of License Agreement by City. The City may terminate this License Agreement as to any Wireless Facility for breach of this License Agreement on 30 days written notice to the Licensee stating the breach, the date of termination, and the Licensee's opportunity to cure the breach within the 30-day period. This License Agreement will terminate as provided in the notice unless the Licensee cures the breach within the 30-day period or, if it is not reasonably possible to cure the breach within that period, the Licensee has promptly commenced the cure and continuously and diligently pursues the cure to completion. All representations, warranties and indemnities provided by the Licensee shall survive the termination of this Agreement as a whole or as to any Wireless Facility.

Section 18. Removal Bond. The Licensee must deposit with the City, prior to the installation of the Licensee's first Wireless Facility on a City Facility under this License Agreement, a bond in a form provided by the City in the amount of \$10,000 *multiplied by* the number of Wireless Facilities proposed under this License Agreement. The purpose of the bond is to guarantee (A) the safe and efficient operation, maintenance, and removal of every element of the Wireless Facility in accordance with this License Agreement and (B) to repair or restore any damage to or disruption of any City Facility or other property.

Section 19. Notices. All notices related to this License Agreement must be in writing and will be deemed given if sent by certified mail, return receipt requested. or overnight delivery by a nationwide commercial courier:

To City:
City of Warrenville
28W701 Stafford Place
Warrenville, IL 60555
Attention: City Administrator

With a copy to:
City of Warrenville
3S346 Mignin Drive
Warrenville, IL 60555
Attention: Public Works

To Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
575 Morosgo Drive NE
Atlanta, GA 30324
Re: Wireless Installation on Public Structures Warrenville, Illinois
Fixed Asset # _____

in each of the above cases (excluding bills), with a copy sent to:

New Cingular Wireless PCS, LLC
Attn: Legal Department, Network Operations
Re: Wireless Installation on Public Structures Warrenville, Illinois
Fixed Asset # _____
208 S. Akard Street
Dallas, TX 75202-4206

A notice will be effective on actual receipt or refusal to accept and either party may change its notice provision by written notice to the other party.

Section 20. General Provisions.

(A) Amendments. This License Agreement may be amended only in writing signed by properly authorized representatives of the City and the Licensee.

(B) Authorization. Each party represents and warrants that it has the authority to enter into this License Agreement.

(C) Binding Effect. This License Agreement is binding on each party's successors and assigns.

(D) Entire Agreement. As of the Effective Date, this License Agreement is the only agreement between the City and the Licensee with regard to SWFs within public rights-of-way. Except for this License Agreement there are no promises or understandings, oral or written, that apply to or bind the parties as to the subject matter hereof.

(E) No Waiver of Provisions. The delay or failure of a party to assert a right under, or insist on strict performance of, this License Agreement will not be deemed a waiver of that right or the ability to insist on strict performance.

(F) Counterparts. This License Agreement may be signed separately by the City and the Licensee and transmitted to the other party in PDF (.pdf) format, and the two signed counterparts will be deemed one instrument.

IN WITNESS WHEREOF, the City and the Licensee have cause this License Agreement to be signed by its duly authorized representative as of the Effective Date.

Licensee

Signature:

Printed name:

Blaine Thomas

Title: Director-Construction & Engineering

City of Warrenville

Signature:

Printed name:

Title: _____

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SCHEDULE OF APPROVED WIRELESS FACILITIES

This Schedule of Approved Wireless Facilities includes an “Identification Sheet” for the Licensee’s Wireless Facilities for which the City has issued a permit and has approved for location on a City Facility (each an “*Approved Wireless Facility*”).

Each Identification Sheet must include the permit date, the location of the City Facility, a drawing or other description of the City Facility, identification and description of the Approved Wireless Facility, and all site-specific terms and conditions related to the Approved Wireless Facility. An Identification Sheet for an additional or replacement Approved Wireless Facility may be added to this Schedule only with written consent of the City Administrator and the Licensee.

Each Identification Sheet must be attached to this Schedule of Approved SWFs.

[See following pages for Identification Sheets]