

CITY OF MORENO VALLEY
TELECOMMUNICATIONS LICENSE AGREEMENT
(AT&T Site: CSL04656 / FA # 15547709) located at El Potrero Park

This Telecommunications License Agreement ("License") is effective as of the date signed by Licensor and is by and between THE CITY OF MORENO VALLEY / THE MORENO VALLEY COMMUNITY SERVICES DISTRICT, hereinafter called "Licensor," and, New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319, hereinafter called "Licensee."

The parties agree as follows:

1. Premises.

Licensor owns the real property legally described in Exhibit "A" hereinafter called "Property." Subject to the following terms and conditions, Licensor licenses to Licensee that portion of Licensor's Property depicted in Exhibit "B," including all necessary and reasonable access and utility rights for installation, operation, and maintenance of Licensee's equipment, structures, and utilities (the "Premises"). Exhibit "C," Conditional Use Permit and Conditions of Approval, is attached hereto and incorporated by reference into this License Agreement.

2. Use.

- A. The Premises may be used by Licensee for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission, and the reception of radio communication signals on various frequencies and the construction, maintenance, and operation of related communications facilities, subject to the terms and conditions of this License.
- B. Licensee shall use the Premises in compliance with all applicable laws, statutes, ordinances, rules, regulations, and orders in effect.
- C. Licensor agrees, at no expense to Licensor, to cooperate with Licensee, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises.
- D. The terms and conditions in this License are offered solely to Licensee as an inducement to execute the License for the Premises. Licensor would not necessarily license the Premises to another licensee on such favorable terms and conditions, it being understood that Licensor is specifically relying on the identity of Licensee in agreeing to the terms and conditions in this License. Licensee acknowledges that the License terms and conditions are for Licensee's benefit only so long as Licensee operates the business allowed by this License. But for the previously stated reasons, Licensor would not enter into this License. Therefore, Licensee shall not voluntarily, involuntarily, or by operation of laws,

sublicense all or any part of the Premises or allow it to be assigned or sublicensed to any person or entity other than Licensee except as otherwise permitted under Section 13.

- E. Licensee shall not voluntarily, involuntarily, or by operation of laws, sublicense all or any part of the Premises or allow it to be sublicensed, to any person or entity other than Licensee (except as otherwise permitted under Section 13) without the prior written approval of Licensor, which approval will not be unreasonably withheld, delayed, or conditioned. In the event Licensee sublicenses or permits the co-location of equipment or antenna space within the Premises or on Licensee's pole to a communications carrier unaffiliated to Licensee, the Rent (as defined below) due under this License shall increase by an amount equal to Fifty Percent (50%) of the current rent at the time of the sublicensing or collocation for each month the additional carrier's equipment is located within the Premises or on the pole. Notwithstanding anything in this License to the contrary, nothing in this License shall prohibit the shared use of Licensee's Facilities (as defined below) with another party pursuant to a strategic alliance, roaming, or other agreement with Licensee; provided, however, such third party does not install any equipment in or upon the Premises.

3. Conditions Precedent.

This License is conditioned upon Licensee obtaining all necessary federal, state, or local governmental permits and approvals enabling Licensee to construct and operate mobile/wireless communications facilities on the Premises.

4. Term.

This License is binding and in effect upon full execution and delivery by Licensor and Licensee. The term of this License ("Term") shall be five (5) years commencing on the first day of the month following the date Tenant commences construction ("Commencement Date"). Licensee shall have the right to extend the Term of this License for five (5) additional terms ("Renewal Term") of five (5) years each. The terms and conditions for the Renewal Term shall be the same terms and conditions of this License, except that the Rent shall be increased as set forth in Section 5. This License shall automatically be extended for each successive five (5) year Renewal Term unless notice is provided in writing of Licensor's, or Licensee's intention not to extend this License at least thirty (30) days but not more than 180 days prior to the expiration of the first five-year Term or any subsequent Renewal Term.

5. License Rental Fee.

- A. In consideration of the rights granted by this License, the Licensee shall pay the Licensor a one-time payment of *twenty-five thousand dollars (\$25,000)*, payable within forty-five(45) days after License is fully executed.

- B. The payment form (check, money order, etc.) shall be reference as AT&T and include a detailed description memo of the purpose of the transaction. This one-time payment shall be made payable to the City of Moreno Valley, and sent to:

City of Moreno Valley
Parks And Community Services
Attn: Parks and Landscape Services
14075 Frederick St.
Moreno Valley, CA 92553

- C. In consideration of the rights granted by this License, upon the Commencement Date and throughout the Term of this License, Licensee shall pay Licensor the sum of Thirty-Nine Thousand Dollars (\$39,000.00) per year as License Rental Fee ("License Rental Fee"). Commencing on the Commencement Date, the License Rental Fee shall be payable in twelve (12) equal monthly installments, on or before the first day of each month. At the Licensee's option, the Licensee may elect to make yearly payments on or before the first day of the month of the Commencement Date. License Fee shall increase annually at a rate of either CPI based on the Riverside-San Bernardino-Ontario Index CPI (U) all items for 12 months or three percent (3%), whichever is greater each year on each anniversary of the Commencement Date. The initial License Fee payment will be forwarded by Licensee to Licensor within sixty (60) days after the Commencement Date.

- D. The payment form (check, money order, etc.) shall reference the site AT&T. License Fee payments shall be made payable to the City of Moreno Valley, and sent to:

City of Moreno Valley
Finance Department
P.O. Box 88005
Moreno Valley, CA 92552-0805

- E. License Fee is assessed based on ground equipment and aerial lease areas totaling approximately eight hundred thirteen (813) square feet including telecommunications equipment, a generator, and antenna structure for the uses permitted under the License, as referenced in Exhibit 'B' attached hereto and made part hereof.
- F. If the License Fee is not received by Licensor on or before the fifteenth (15th) day following the due date, it shall be deemed delinquent. If the License Fee is not paid before delinquency, then the amount due and unpaid shall be subject to a monthly late charge at the rate of five percent (5%) of the overdue amount, without limitation to Licensor's other rights and remedies under this License.

6. Improvements; Access.

- A. Licensee shall have the right (but not the obligation) upon reasonable notice to Licensor (City), following the full execution and delivery of this License and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively “Tests”) to determine the suitability of the Premises for Licensee’s Facilities (as defined herein) and for the purpose of preparing for the construction of Licensee’s Facilities. During any Tests or pre-construction work, Licensee will have in effect the insurance required in Section 12, Insurance. Licensee will notify Licensor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Licensor. If Licensee determines that the Premises are unsuitable for Licensee’s contemplated use, then Licensee will notify Licensor and this License will terminate.
- B. Subject to all terms and conditions of this License, Conditional Use Permit, and Approved Plans and Specs, Licensee has the right to construct, maintain and operate on the Premises radio communications facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and structures, (“Licensee’s Facilities”) and lighting as specifically identified on the attached Exhibit B. In connection therewith, Licensee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Licensee’s communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers, except that any change to the Licensee’s Facilities adversely and materially affecting the visual appearance of the Premises, any modification of equipment which places an additional load on the Licensor’s electrical system requiring an increase in Licensee’s 200 amp service panel size and capacity shall be prohibited until approved in writing by Licensor, and such approval will not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. Upon prior approval by Licensor and notwithstanding the forgoing, Licensee shall be entitled to exchange and replace equipment and antennas within the Premises provided that (i) any new equipment is either not physically or materially greater in size or not visible to the public; or (ii) any antennas are not substantially greater in size than those previously installed.
- C. Licensee shall submit an application to the City of Moreno Valley for a Conditional Use Permit and pay all applicable fees. Subject to the approval of a Conditional Use Permit, Licensee shall construct, maintain, and operate said Licensees Facilities in accordance with the Conditions of Approval as set forth by the City’s CEDD Planning, Building & Safety, Parks & Community Services Departments, and the Fire Prevention Bureau, et al, during the plan review process.
- D. Licensee shall obtain and pay for all building permits and fees as required. Temporary fencing shall be placed around the construction site for the duration of construction.
- E. As part of the installation of Licensee’s Facilities, Licensee shall have the right to install electrical service, at Licensee’s expense, including, but not limited to

primary power and installation of an emergency back-up power system for Licensee's Facilities. Subject to Licensor's approval of the location, which approval shall not be unreasonably withheld, Licensee shall have the right to place utilities on (or to bring utilities across) Licensor's Property to service the Premises and Licensee's Facilities.

- F. Licensee shall commence and diligently pursue all the construction and installation work described in this Section 6 so as to fully complete said work within 180 days of the Commencement Date subject to reasonable extension of time due to events of force majeure, which shall be defined as any event or circumstance beyond the reasonable control of the Licensee, including but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In the event of an interference with communication issue caused by Licensee's equipment and facility, Licensee shall commence and diligently work to resolve the issue within 90 days or less upon learning of an interference issue or reasonably should have known. Licensor shall have all rights necessary to remediate the interference issue if Licensee fails to act within a reasonable time, including but not limited to recovering all reasonable costs and expenses incurred by Licensor in such efforts.
- G. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner as defined by the prevailing industry standard.
- H. The Licensee shall have Performance Bond, and a Labor and Material Bond for all work associated with construction of Licensee facilities in amounts not less than \$1,000,000 for the Performance Bond and \$500,000 for the Labor and Material Bond, and in a form issued by a reputable bonding company acceptable to the Licensor.
- I. Title to Licensee's Facilities installed or placed on the Premises by Licensee shall be held by Licensee. Licensee shall remove all of Licensee's Facilities at its sole expense on or before the expiration or termination of this License, except those portions of Licensee's Facilities which are fully integrated into Licensor owned property, including ballfield lighting system, if applicable. It is the intent of the parties that electrical service and lighting for park facilities including but not limited to park ballfield lighting (if applicable) shall be a permanent Licensor installation and all electrical service components, panels, conduits, and conductors shall remain in place upon termination of this License and title to same shall revert to the City of Moreno Valley. Upon termination of this License, the Licensor shall require the Licensee to remove all structures, buildings, and foundations installed by Licensee at Licensee's sole expense. The Licensor will notify the Licensee thirty (30) days prior to the termination or expiration of this License regarding the required removal of all improvements, including structures, buildings, and foundations. The Licensee is obligated to remove or address these improvements to the Licensor's satisfaction within six (6) months of the Licensor's notification. If the Licensee fails to do so, the Licensor may remove

all such improvements, and all associated removal and disposal costs will be billed to Licensee.

- J. Licensors shall provide continuous access to Licensee, Licensee's employees, agents, contractors, and subcontractors a designated access route on Exhibit B to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Licensee, subject to Licensee obtaining an encroachment permit and all other permits necessary for Licensee's use of the property. Licensors represent and warrant that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Licensee to the extent required to construct, maintain, install, and operate Licensee's Facilities on the Premises. Licensee's exercise of such rights shall not cause undue inconvenience to the Licensors. Except in the event of an emergency (including equipment failure), Licensee shall provide a minimum of twenty-four (24) hours' notice to the City's Parks and Landscape Services Division prior to access of the Premises for scheduled routine maintenance and other major work, by calling the Parks and Landscape Services mainline phone no. of 951.413.3702 and emailing the Parks and Landscape Services Division at parksandlandscape@moval.org.
- K. For additional access and utility rights beyond those provided to Licensee by Licensors in this License, it shall be the responsibility of Licensee to obtain and pay for all additional easements, rights of entry and all incidentals necessary to Licensee's operations upon the Premises.
- L. Licensors shall maintain an access pathway from a public roadway to the Premises in a manner sufficient to allow access for Licensee's use of the Premises. Licensors shall be responsible for maintaining and repairing such access pathway, at its sole expense, except for any damage caused by Licensee's use of such access pathway; or replace damaged items. If Licensee causes any such damage, Licensee shall promptly repair all damages within twenty (20) working days of Licensee's receipt of written notice from the Licensors. If the Licensee fails to make such repair or replacement within twenty (20) working days of Licensee's receipt of written notice, the Licensors may cause the work to be done and the costs incurred thereby shall become the liability of the Licensee, and the Licensors shall be reimbursed said cost.
- M. Licensee shall fully and promptly pay for all utilities used by Licensee for the use, operation, and maintenance of Licensee's Facilities in the Premises.
- N. Licensors shall be entitled to enter the Premises at any time upon five (5) days advance written notice to Licensee to visually inspect Licensee's facilities for compliance with the terms of this License, and with all applicable Federal, state, and local governmental regulations.
- O. Licensors retain the right to access the Premises during the term of this License for any purpose that does not interfere with Licensee's use of the Premises as provided herein.

7. Maintenance; Landscaping

- A. Licensee shall be responsible for repairing and maintaining Licensee's Facilities and any other improvements installed by Licensee on the Premises in a proper operating and reasonably safe condition. This shall include the repair of all damage incurred whether natural or man made.
- B. Upon acceptance of the site improvements, Licensor shall be responsible for all graffiti removal and abatement at the Premises. Licensee shall pay a graffiti removal and landscape maintenance fee in the amount of One Hundred Dollars (\$100.00) per month for said service. Maintenance fee shall increase annually at a rate of either CPI based on the Riverside-San Bernardino-Ontario Index CPI (U) all items for the preceding 12 months or 3%, whichever is greater. The abatement and landscape maintenance fee shall be noted as a separate line item.

8. Interference with Communications.

- A. Licensee agrees to install equipment of types and frequencies which will not cause interference to the currently existing communications equipment (as configured) of Licensor, Licensor's vendors, or other pre-existing licensees or lessees of the Premises. In the event Licensee's equipment causes such interference, Licensee shall cooperate with Licensor in determining the source and will immediately take all steps necessary to correct and eliminate the interference. If said interference cannot be eliminated within forty-eight (48) hours after receipt of written notice from Licensor to Licensee of the existence of such interference and Licensor has reasonably determined Licensee's equipment to be the source of said interference, Licensee shall discontinue use of the equipment creating said interference. Licensee shall shut down the interfering equipment except for intermittent operation for the purpose of testing after performing any maintenance, repair, modification, replacement, or other action for the purpose of correcting such interference. If such interference is not corrected within six (6) months after receipt of the aforesaid notice, Licensee shall remove the interfering equipment from the Premises. Notwithstanding anything herein to the contrary, in the event that the Licensee's cause of such interference cannot be pinpointed to a particular piece of equipment or system, Licensee shall disconnect the electric power and shut down all of its equipment until such time as the interference problem is corrected. Licensor shall not be liable to Licensee for any interruption of service of Licensee unless caused by Licensor or for interference with the operation of Licensee's equipment unless caused by Licensor.
- B. Intentionally deleted.
- C. Licensee has satisfied itself and hereby represents and warrants to Licensor that, to the best of Licensee's knowledge, no such interference shall result to the currently existing systems (as configured) of Licensor or other pre-existing licensees or lessees at the Premises. Licensee agrees to indemnify, hold

harmless and defend Licensor against any claim or damage, including reasonable attorney's fees, arising out of such interference.

- D. Licensee shall be responsible for performing and providing documentation to the Licensor for all engineering studies to ensure that the placement of its equipment at the Premises will not cause interference with any existing equipment (as configured) placed there by Licensor and/or any other pre-existing licensees or lessees.
- E. It is emphasized that the primary use of the Premises is intended to include future and presently unknown Licensor uses, the integrity and security of which shall in no way be compromised by the Licensee. If during the Term of the License, Licensor's present or future operations requires installation of additional telecommunications equipment adjacent to the Premises, Licensor agrees to take all reasonable steps necessary not to affect or interfere with Licensee's right hereunder. If, however, such interference occurs despite the best efforts of both Licensor and Licensee, the Licensor's operational need shall prevail, and Licensee shall be required to modify or remove their interfering equipment as long as Licensor's telecommunications equipment is operating within its licensed frequencies, and in accordance with all applicable laws, regulations and manufacturer's specifications.
- F. Excepting pre-existing equipment located on the Premises prior to the date of this License, Licensor shall not allow any use of the Property which interferes with Licensee's use of the Premises. If such interference occurs, Licensor shall promptly correct such interference within forty-eight (48) hours of Licensor's receipt of written notice from Licensee.

9. Taxes.

Licensee shall pay all taxes assessed against Licensee's Facilities. Pursuant to California Revenue and Taxation Code section 107.6, Licensee is notified that the property interest acquired by Licensee in the Premises under this License may be subject to property taxation as a possessory interest in real property, and Licensee may be subject to the payments of property taxes levied on that interest.

10. Termination.

This License shall not be revoked or terminated during the Term or any Renewal Term except as expressly stated in this License. This License may be terminated with thirty (30) days prior written notice as follows:

- A. by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that if such default is curable, but not curable within such sixty (60) day period, then within such period of time as is reasonably necessary to accomplish such cure (in order to avail itself of this time period in excess of sixty (60) days, the defaulting party must send to the other party, within the sixty (60) day period, a written plan to cure the default, which is reasonably

acceptable to the other party, and the defaulting party diligently commences and continues performance of such cure to completion according to the written plan).

- B. by Licensee if it does not obtain or maintain licenses, permits or other approvals necessary to the construction or operation of Licensee's Facilities; however, Licensee shall act with due diligence to obtain and maintain such agreements, licenses, permits, and other approvals.
- C. by Licensee if Licensee is unable to occupy or utilize the Premises due to ruling or directive of the Federal Communications Commission ("FCC") or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies.
- D. by Licensee if Licensee determines that the Premises are not appropriate for its operations for economic, environmental, or technological reasons, including without limitation, signal strength or interference; or
- E. by either party for any reason or for no reason provided the terminating party delivers written notice of termination to the other party prior to the Commencement Date.
- F. In the event of a termination of this License, by Licensee if Licensee determines that the Premises are not appropriate for its operations for economic, environmental, or technological reasons, including without limitation, signal strength or interference which occurs at any time within the initial Term of this License, Licensee shall pay to Licensor as consideration of such early termination of fee equal to three (3) months of the then current Rent. Such fee shall be paid within thirty (30) days of the effective date of termination of this License.
- G. In the event of a termination of this License for any cause in any term after the initial five (5) year Term, except default and failure to cure by Licensor, Licensee shall not receive a refund of any rental amounts paid in advance to Licensor.

11. Condemnation.

If a condemning authority takes all of Licensor's Property, or a portion which in Licensee's opinion is sufficient to render the Premises unsuitable for Licensee's use, then this License shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Licensee shall include the value of Licensee's Facilities, prepaid rent, and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

12. Insurance

- A. Licensee shall maintain in full force and effect, at no expense to Licensor, the following insurance policies:

1. A commercial general liability insurance policy per ISO form CG 00 01 or its equivalent, approved by the City, in the amount of five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate for death, bodily injury, personal and advertising injury, or property damage;
 2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence;
- B. The insurance coverage required of the Licensee by section 12 shall also meet the following requirements:
1. The insurance shall be primary with respect to any insurance or coverage maintained by Licensor and shall not call upon Licensor insurance or coverage for any contribution.
 2. The insurance policies shall be endorsed for contractual liability and personal injury;
 3. The commercial general liability and automobile liability policies shall be specifically endorsed to include the City of Moreno Valley, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District (CSD), its officers, agents, employees, and volunteers, as additionally named insureds under the policies; and shall bear an endorsement substantially containing the following provisions:

Solely with respect to work done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District (CSD), its officers, employees and agents, are added as additional insured under this policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, California, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District (CSD), its officers, employees and agents; under any third party liability policy.

It is further agreed that the other insurance provision(s) of the policy are amended to conform therewith
 4. Licensee shall provide to Licensor's Risk Manager, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements including Licensor, its officers, agents, employees, and volunteers, as additional insureds as respects to this Agreement;

5. The insurance policies shall provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance policies except upon thirty (30) days written notice to Licensor's Risk Manager;
 6. If the insurance is written on a Claims Made Form, then, following termination of this License, said insurance coverage shall survive for a period of not less than five (5) years;
 7. The insurance policies shall provide for a retroactive date of the placement of Licensee's Facilities coinciding with the effective date of this License;
 8. The insurance shall be approved as to form and sufficiency by the Licensor's Risk Manager and the Licensor Attorney.
- C. If it employs any person, Licensee shall maintain worker's compensation in such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the VENDOR and the CITY, HA, and CSD against any loss, claim or damage arising from any injuries or occupational diseases happening to any worker employed by the VENDOR in the course of carrying out this AGREEMENT. Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: VENDOR and its insurer shall waive any right of subrogation against City of Moreno Valley, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers.

13. Successors and assigns.

Licensee may assign this License at any time subject to amending the Conditional Use Permit, and upon written notice to and approval of Licensor, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, Licensee shall have the right to sublease or assign its rights under this License without consent of Licensor, (i) to any of its partners, members, subsidiaries, affiliates or successor legal entities, (ii) to any entity acquiring substantially all of the assets of Licensee in the geographic region the Premises are located, or (iii) to any entity in connection with any financing, loan, security interest, pledge, or mortgage of Licensee's property. This License shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties.

14. Environmental Indemnification; Hazardous substances.

- A. Licensee hereby represents, warrants, covenants and agrees to and with Licensor that all of Licensee's operations or activities upon, or any use or occupancy of the Property by Licensee, or any portion thereof, by Licensee, shall be in all respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge, or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substance (as defined below).

- B. If any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the “Remedial Work”) is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity due to any Hazardous Substances brought on to or generated on the Property by Licensee, Licensee shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, or order. All costs and expenses of such Remedial Work shall be paid by Licensee including, without limitation, all charges of Licensee’s contractors, consultants and engineers and Licensor’s reasonable attorney, architect’s and/or consultant’s fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Licensee shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Licensor may, but shall not be required to, cause such Remedial Work to be performed, and all reasonable costs and expenses thereof, or incurred in connection therewith, shall be reimbursed to Licensor. In addition, if remedial work is necessary, termination of this agreement does not absolve Licensee of responsibilities to continue all remedial work.
- C. “Hazardous Substances” shall include without limitation:
1. Those substances included within the definitions of “hazardous substances,” “hazardous materials,” toxic substances,” or “solid waste” in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) (“SARA”), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) (“RCRA”), and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and in the regulations promulgated pursuant to said laws, all as may be amended from time to time;
 2. Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 30, and as may be amended from time to time);
 3. Any material, waste or substance which is petroleum, asbestos, polychlorinated biphenyls, designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); or radioactive materials; and such other substances, materials, and wastes which are or become regulated as hazardous or toxic under applicable local, state, or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

15. Indemnity and Mutual Release.

Licensor and Licensee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorney's fees) and claims of liability or loss to the extent arising from the ownership, use and/or occupancy of the Licensor's Property or Premises by the indemnifying party. This indemnity does not apply to any claims arising from the negligence or intentional misconduct of the indemnified party, breach of this License by the indemnified party, or violation of law by the indemnified party. The indemnity obligations under this Section will survive the termination of this License.

16. Attorneys' fees; Litigation costs.

- A. If any action at law or in equity is brought to recover any Rent or other sums under this License, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this License, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled to the extent award by a court of law.
- B. Whenever provision is made in this License for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial or appeal of the action.
- C. Any award of damages following judicial remedy or arbitration as a result of the breach of this License or any of its provisions shall include an award of prejudgment interest from the date of the breach at the lesser of (i) the maximum amount of interest allowed by law or (ii) Ten Percent (10%).

17. Waiver of Incidental and Consequential Damages.

Except for indemnity claims under Section 15 above, neither party will assert any claim whatsoever against the other party for loss of anticipatory profits or any other indirect, special, incidental, or consequential damages incurred as a result of the construction, installation, operation, maintenance, or replacement of personal property owned by either party, or Licensor's or Licensee's use of the Premises or Licensor's Property, including any and all losses incurred as a result of Licensor's or Licensee's actions or defaults.

18. Miscellaneous.

- A. Severability. If any provision of the License is invalid or unenforceable with respect to any party, the remainder of this License or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this License shall be valid and enforceable to the fullest extent permitted by law.

- B. Notices. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight mail to the address of the respective parties set forth below:

City:
City of Moreno Valley
City Manager
14177 Frederick Street
Moreno Valley, CA 92552-0805

Licensee:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: CSL04656; Cell Site Name: El Potrero Park (CA)
Fixed Asset #: 15547709
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:
New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: CSL04656; Cell Site Name: El Potrero Park (CA)
Fixed Asset #: 15547709
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

- C. Choice of Law. This License shall be governed under the laws of the State of California and applicable Federal law.
- D. Survival of Terms. Terms and conditions of this License which by their sense and context survive the termination, cancellation or expiration of this License will so survive.
- E. Entire Agreement. The terms of this License (including the Exhibits, all of which are hereby incorporated by reference) are intended by the parties as the final expression of their agreement with respect to such terms. The parties further intend that this License constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any proceeding, involving this License. The language in all parts of this License will in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against either party.
- F. Amendments and Modifications. No amendments, modification, or supplement, including those by custom, usage of trade, or course of dealing, of any provisions of this License shall be binding on any of the parties unless it is in writing and signed by the parties in interest at the time of the modification. No oral order,

objection, claim, or notice by either party to the other shall affect or modify any of the terms or obligations contained in the License.

- G. Venue. At Licensor's option, any action by any party to this License shall be brought in the appropriate court of competent jurisdiction within the County of Riverside, notwithstanding any other provision of law which may provide that such action may be brought in some other location.
- H. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this License by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this License thereafter.

[The remainder of this page is intentionally blank; signature page follows.]

DRAFT

IN WITNESS WHEREOF, Licensor and Licensee have executed this Telecommunications License Agreement as of the date and year signed by Licensor.

LICENSOR:

CITY OF MORENO VALLEY, A MUNICIPAL CORPORATION

By: _____
Name: Brian Mohan
Title: City Manager City of Moreno Valley and Executive Director of the Moreno Valley Community Services District

Date: _____

LICENSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

By: _____
Name: M. Patricia Rodriguez
Title: City Clerk City of Moreno Valley and Secretary of the Moreno Valley Community Services District

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Name: _____
Title: City Attorney for the City of Moreno Valley

Date: _____

RECOMMENDED FOR APPROVAL:

By: _____
Name: Jeremy Bubnick
Title: Parks and Community Services Director
City of Moreno Valley

Date: _____

Enclosures: Exhibit "A" – Legal Description of City's Property
Exhibit "B" – Description of Premises, Licensee's Facilities Incorporation of Plans by Reference
Exhibit "C" – Conditional Use Permit and Conditions of Approval