

**AMENDED AND RESTATED
COMMUNICATIONS SITE LICENSE AGREEMENT**

BETWEEN

CITY OF FONTANA

AND

NEW CINGULAR WIRELESS PCS, LLC

FOR

14000 PHILADELPHIA AVE

(NEAR MULBERRY AVE AND CHERRY AVE)

**CITY OF FONTANA
AMENDED AND RESTATED
COMMUNICATIONS SITE LICENSE AGREEMENT**

(New Cingular Wireless PCS – Existing SCE 14000 Philadelphia Ave Site)

THIS AMENDED AND RESTATED COMMUNICATIONS FACILITY LICENSE AGREEMENT (“License”) is made and entered into as of the later of the signature dates below (“Effective Date”) by and between the **City of Fontana**, a municipal corporation with its principal offices located at 8353 Sierra Ave., Fontana, California 92335 (“City”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company with a mailing address of 1025 Lenox Park Blvd. 3rd Floor, Atlanta, Georgia 30319 (“Licensee”). City and Licensee are sometimes referred to in this License Agreement individually as a “party” or jointly as “parties.” The term “License” used in herein means this Amended and Restated Communications Site License Agreement and any amendments to this License Agreement as may be executed between the parties in accordance with the terms herein.

RECITALS

A. Licensors is the owner of that certain property located in the City of Fontana, County of San Bernardino, State of California as more particularly described in **Exhibit A** attached hereto (the “Property”).

B. Southern California Edison (“SCE”) is the owner of an easement and right of way for electrical transmission and communication purposes which encumbers all or a part of the Property pursuant to that certain Grant of Easement to SCE, dated October 25, 1946 and recorded on December 19, 1946 in Book 1859, page 46, as Instrument No. 33 of Official Records in the Office of the County Recorder of San Bernardino County, State of California, a copy of which is attached hereto as **Exhibit C** (“SCE Easement”). Nothing in this Agreement shall limit, modify or degrade SCE's rights under the SCE Easement.

C. SCE has constructed, among other facilities, electric transmission towers and/or poles within the SCE Easement (“Electric Facilities”).

D. The City, SCE, and Licensee are parties to that certain Communications Site License Agreement dated as of March 7, 2005 for purposes of permitting the installation, maintenance and operation of Licensee’s communications equipment upon the Electric Facilities and upon the surface of the SCE Easement (the “Original Agreement”).

E. On _____, the City, SCE, and Licensee entered into that certain License Termination Agreement whereby SCE, the City and Licensee mutually agreed to terminate the Original Agreement, as of the Effective Date of this Amended and Restated Communications Facility License Agreement.

F. Licensee desires to continue to use and operate certain communications equipment upon the ground of the City's Property subject to the terms and conditions of this License.

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereto agree to amend and restate the Original License as follows:

LICENSE

Section 1. Non-exclusive License. Subject to the terms and conditions hereinafter set forth, City grants Licensee a non-exclusive license to install, operate and maintain its Communications Facility, as particularly described in **Exhibit B** hereto, on a portion or portions of the Property, as designated and approved by City. **Exhibit B** depicts the specific dimensions, appearance, equipment and approved location of the Communications Facility on the Property to be used by Licensee under this License ("Licensed Area"). The Licensed Area includes (i) approximately three hundred eighty-four and sixteen hundredths (384.16) square feet of designated surface ground space; and (ii) utility routes all as depicted in **Exhibit B**. Notwithstanding City's approval of Licensee's use of the Licensed Area or the Property, nothing in this License may be deemed to grant, convey, create, or vest in Licensee a real property interest in land, including any fee, leasehold interest, or easement. The term "Communications Facility" as used in this License shall include all antennas, facilities, structures, foundations, pads, cables, conduits and equipment and utilities that Licensee erects, installs and/or uses on or under the Property, as authorized and listed in **Exhibit B**, as may be modified from time to time in accordance with this License.

Section 1.1 All Parties acknowledge that City, in executing this License, is acting only in its proprietary capacity as the owner of the Property and Licensed Area, and not in any regulatory fashion. Licensee shall not consider this License as approval of any applicable permits, licenses or other governmental approvals required for the construction or operation needed for the use described herein.

Section 2. Access License.

Section 2.1 Licensee shall have the right of non-exclusive ingress and egress to the Licensed Area, seven (7) days a week, twenty-four (24) hours a day, via foot or motor vehicle (but not including vehicles with more than two (2) axles/more than twenty (20) feet in length) via the access area delineated as such in **Exhibit B**, in order to install, operate, and maintain the Communications Facility, subject to the limitations set forth below.

Section 2.2 Prior to accessing the Licensed Area, Licensee shall provide both written notice to the City by email to mballantyne@fontanaca.gov at least forty-eight (48) hours in advance, except in the event of a bone fide emergency affecting the health, safety, and welfare of the Property's occupants or the operational integrity of the Communications Facility, in which case Licensee shall provide notice to City as soon as reasonably possible after such emergency access. In the event access to the Licensed Area is restricted and/or locked by City personnel,

Licensee shall be required to obtain any and all necessary access credentials or keys from the City Manager's Office, located at 8353 Sierra Ave, Fontana, CA 92335 or from the City Manager's designee, on a temporary basis, not to exceed Licensee's reasonable access requirements. In such event, Licensee or its designee shall provide proper identification prior to checking out any access credentials or keys.

Section 2.3 All access to the Licensed Area by Licensee shall be subject in each instance to all permits, ordinances, as well as any local, state, and federal laws ("Laws") in addition to this License.

Section 3. Permitted Use. Licensee may transmit and receive communication signals and install, operate and maintain the Communications Facility in the Licensed Area in accordance with the site plan and dimension sketch of the Communications Facility in **Exhibit B** hereto. Licensee may not install any other facilities or equipment of any kind that is not otherwise described and depicted in **Exhibit B** or otherwise intensify, expand, or alter its use of the site or the Communications Facility without City's prior written consent which may be granted or denied in City's sole discretion. Licensee acknowledges that the primary purpose of the Property is to serve as a valuable asset to the community of Fontana and the City itself, and Licensee's use of the Property shall be subject to City's paramount rights ("Paramount Rights") to use the Property for any and all current and future uses necessary for City's municipal needs. If City determines that Licensee is interfering with such use, City shall notify Licensee and Licensee shall cease such interference within twenty-four (24) hours. In case of an emergency, City may take steps to eliminate such interference without prior notice to Licensee and Licensee shall reimburse City for any and all costs incurred to eliminate such interference.

Section 3.1 Any required permits or approvals for the Communication Facility shall be obtained by Licensee at Licensee's sole expense. Furthermore, it is understood and agreed that Licensee's ability to install the Communication Facility is contingent upon its obtaining, prior to construction of Communication Facility, all of the certificates, permits, authorizations, and other approvals that may be required by any federal, state, or local authorities, including but not limited to any permits, authorizations, and approvals required by the California Air Resources Board and the applicable local air pollution control district (collectively, the "Governmental Approvals"; individually, a "Governmental Approval"). City shall bear no responsibility or liability under this License for Licensee's inability to make use of the Licensed Area for the Communication Facility due to a failure to obtain any required permit, authorization, or approval. If Licensee fails to receive such permits, authorizations, or approvals within one (1) year of the Effective Date of this License, this License shall automatically terminate.

Section 4. License Term; Renewal Term. The initial term of this License shall be five (5) years ("Initial Term"), commencing on the Effective Date. The Initial Term of this License shall expire at Midnight on the day before the fifth (5th) anniversary of the Effective Date. Unless either

party gives written notice of its intention not to extend the License to the other party at least sixty (60) days prior to the end of the Initial Term or Renewal Term, as applicable and then in effect, and provided Licensee is not in default under this License, this License shall automatically be extended upon the expiration of the Initial Term, or Renewal Term, as applicable, for three (3) additional terms of five (5) years each (“Renewal Term”), subject to all terms and conditions of this License. The Initial Term and Renewal Term shall be collectively known as the “Term”.

Section 5. License Fee; Increases; Late Payments. Commencing on the first day of the month following the Effective Date, Licensee shall pay City on or before the fifth (5th) day of each calendar month in advance, Three Thousand Five Hundred Dollars (\$3,500.00) (“License Fee”), and thereafter adjusted annually by the greater of: (a) the percentage change in the Consumer Price Index (CPI) - Urban Wage Earners and Clerical Workers for Riverside-San Bernardino-Ontario, CA (“CPI Index”) published for the month that is three (3) months preceding the adjustment date compared to the CPI Index published twelve (12) months before the month that is three (3) months preceding the adjustment date; or (b) an amount equal to four percent (4%) over the amount of the License Fee in effect immediately prior to such increase. The License Fee shall be payable without offset or deduction by ACH or Electronic payment, or check sent to City's address specified below or to any other person or firm as City may, from time to time, designate in writing at least forty-five (45) days in advance of any License Fee due date. If, at any time, Licensee fails to make timely payment, interest shall accrue on the past due amount at the rate of ten percent (10%) per month or the maximum allowable by law, whichever is less, until the License Fee any all accumulated interest is paid in full. This right to collect interest is in addition to all rights of City to terminate this License for non-payment pursuant to Section 10 of this License.

Section 6. Signing Bonus. Within forty five (45) days of the Effective Date of this License, Licensee shall pay to City a one-time payment in the amount of One Thousand Five Hundred Dollars (\$1,500.00) (“**Signing Bonus**”) as partial reimbursement of City’s costs incurred in City’s proprietary capacity for processing and documenting this Amended and Restated Communications Site License Agreement. This Signing Bonus is non-reimbursable.

Section 7. Holdover. If the Communications Facility or any part thereof is still on the Property, or Licensee is still conducting any activities or operations on the Property, or is otherwise using the Property without a written agreement with City after expiration of the License Term, or, if applicable, the Renewal Term, such possession or use shall be deemed a holdover use under the same terms and conditions of this License, except that the License Fee shall be one hundred fifty percent (150%) of the License Fee in effect at the expiration of the License Term or, if applicable, the Renewal Term, and shall be payable in advance in equal monthly installments. Nothing contained herein shall grant Licensee the right to holdover after the expiration of the License Term or, if applicable, the Renewal Term and notwithstanding the payment of license fees during the holdover period, City shall have the right to require Licensee to vacate the Property at any time upon thirty (30) days written notice.

Section 8.

Section 8.1 Permanent Relocation. City shall endeavor to give Licensee at least ninety (90) days prior written notice of the necessity to relocate the Communications Facility or a portion thereof to a new location upon the Property, and will use good faith efforts to provide another mutually acceptable City location on the Property for such relocation; provided Licensee is not in default under this License. Licensee shall be solely responsible at its cost for relocating the Communications Facility and obtaining any necessary permits and otherwise complying with all laws, permits, and other rules and regulations of any public entity applicable in connection with the relocation of its Communications Facility. Licensee shall have a right to terminate this License upon ninety (90) days prior written notice to City if Licensee's relocation of the Communications Facility to the mutually agreeable alternative location on the Property is technically infeasible. If the License is terminated for such reason, Licensee shall not be entitled to reimbursement or payment by City of any expenses or costs it may incur by reason of its election to terminate this License hereunder.

Section 8.2 Temporary Relocation. Licensee understands and agrees that from time to time during the Term, City may require Licensee to remove and/or relocate all or portions of the Communications Facility from the Licensed Area temporarily at Licensee's expense in order for City to exercise its Paramount Rights at the Property. City shall endeavor to give Licensee at least sixty (60) days prior written notice of the necessity to relocate the Communications Facility for the temporary period, and will use good faith efforts to provide temporary space at the Property, or another mutually acceptable City-owned location for such temporary relocation; provided Licensee is not in default under this License. Licensee shall be solely responsible at its cost for obtaining any necessary permits and otherwise complying with all laws, permits, and other rules and regulations of any public entity applicable in connection with the temporary relocation of its Communications Facility. Licensee acknowledges that in case of emergency (as determined by City in its sole discretion), the notice period for temporary relocation may be shortened. Notwithstanding any relocation or any shortened notice period, the License shall continue without abatement of the License Fee unless City is unable to provide space for temporary relocation and as a result Licensee is required to cease to operate its Communications Facility for a period of more than fourteen (14) days in which event Licensee shall be entitled to an abatement of the License Fee equivalent to the number of full days in excess of fourteen (14) days during which Licensee was unable to operate its Communications Facility. City will calculate and refund such abatement amount without interest within sixty (60) days after the end of the temporary relocation period.

Section 8A At the end of the temporary relocation period, Licensee shall at its cost return the relocated Communications Facility to the Licensed Area, unless the parties mutually agree that the Communications Facility may remain at the temporary location in which case the parties shall memorialize such agreement by an amendment to this License. Licensee shall have a right to terminate this License upon thirty (30) days prior written notice to City if any temporary relocation exceeds ninety (90) days, or if City requires Licensee to relocate the Communications

Facility more than one (1) time during the License Term, or more than one (1) time during the Renewal Term. If the License is terminated for such reason, Licensee shall not be entitled to reimbursement or payment by City of any expenses or costs it may incur by reason of its election to terminate this License hereunder.

Section 9. City's Termination. In addition to other rights of termination and revocation City has under this License, City may terminate and revoke this License prior to expiration of the License Term or Renewal Term, if applicable, in any of the following circumstances: For any reason or no reason, exercisable after the tenth anniversary of the Effective Date of the Agreement, upon twelve (12) months advance notice to Licensee.

Section 9.2 By giving Licensee twelve (12) months prior written notice, if City determines in its sole discretion that the Licensed Area is necessary for the exercise of its Paramount Rights at the Property or City decides to sell or otherwise dispose of its fee ownership of the Property. Upon notice of termination and revocation under this Section, City shall make a good faith effort to permit Licensee to relocate the Communications Facility to another of City's sites prior to termination of the License, provided Licensee assumes all costs of any such relocation.

Section 9.3 By giving Licensee sixty (60) days prior written notice, if Licensee fails to maintain and repair the Communications Facility according to the requirements of the License and fails to cure such non-compliance in response to any City request for such repairs within thirty (30) days or within such shorter time specified by City in such written request. Further, if City in its sole discretion determines that the Communications Facility is in a state of disrepair which imminently endangers the health and safety of City employees and other users of the Property, City may terminate the License and take steps to address the situation immediately without prior notice to Licensee, provided that City shall thereafter notify Licensee of the situation, and Licensee shall reimburse City for its actual costs incurred to take such action.

Section 9.4 If Licensee fails to pay the License Fee when due, City may, after giving ten (10) days prior written notice to Licensee, terminate and revoke this License and seek other remedies, as appropriate, under the laws of the State of California, unless Licensee cures such default by payment of the License Fee and accrued interest charges within such notice period.

Section 9.5 If Licensee fails to perform or observe any of terms or conditions of this License, City may, after giving thirty (30) days prior written notice to Licensee terminate and revoke this License and seek other remedies, as appropriate, under the laws of the State, unless Licensee cures such default within such notice period.

Section 10. Licensee's Limited Termination Right. It is understood and agreed that Licensee's ability to use the Property is contingent upon Licensee continually maintaining in full force and effect, after the Effective Date, all the certificates, permits, and other approvals that are

required by any federal, state, or local authorities. In the event that any certificate, permit, license, or approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority so that Licensee is unable to use the Property for its intended purposes, Licensee may terminate this License upon ninety (90) days written notice to City, except that those terms that by their nature survive termination such as Licensee's obligations to remove the Communications Facility and restore the Property, and the indemnity obligation shall survive in accordance with the terms of this License.

Section 11. Licensee's Installation, Ownership, Operation and Maintenance; FCC Regulations, Emissions Testing; Compliance with Law.

Section 11.1 Licensee shall install, construct and maintain the Communications Facility in accordance with this License.

Section 11.2 It is expressly understood and agreed that any and all fixtures and equipment of whatsoever nature at any time constructed or placed on the Property by Licensee shall be and remain the personal property of Licensee. Licensee shall have the right at any time during the License Term, and the Renewal Term, if applicable, to remove any and all fixtures and equipment owned or placed by Licensee in, under, or upon the Licensed Area.

Section 11.3 Licensee, at Licensee's sole cost and expense shall keep and maintain, or cause to be kept and maintained, the Communications Facility in a state of good appearance and repair, reasonable wear and tear excepted. Upon City's written request, Licensee shall complete all such work at its sole expense within thirty (30) days of receipt of such notice. If the Licensee fails to comply with this Section, the City may complete or cause to be completed the work, and Licensee shall reimburse the City for such invoiced costs within thirty (30) days of receipt.

Section 11.4 Licensee shall, at its sole cost and expense, protect, replace and provide any landscaping required in its permits to shield the Communications Facility on the Property and shall promptly replace any City landscaping damaged by Licensee's activities. Upon City's written request, Licensee shall complete all such work at its sole expense within thirty (30) days of receipt of such notice. If the Licensee fails to comply with this Section, the City may complete or cause to be completed the work, and Licensee shall reimburse the City for such invoiced costs within thirty (30) days of receipt.

Section 11.5 Licensee shall have a separate meter installed for Licensee's electrical power consumption, whereupon Licensee shall be solely responsible for payment of all of its electrical utilities costs. No other connection is authorized by this License, and no other fuels of any type shall be used or stored by Licensee within the Licensed Area without the advance written consent of City.

Section 11.6 In addition to compliance with specific laws otherwise described in this License, Licensee shall comply, and will ensure that its contractors and representatives will comply, with all regulations and requirements of the FCC and the California Public Utilities Commission, and all other federal, state and local laws, ordinances, rules and regulations, including health and safety requirements, pertaining to the construction, installation, operation and maintenance of the Communications Facility and work on the Property during the License Term and Renewal Term, and in conjunction with any activities undertaken on the Property by Licensee either prior to the Effective Date, or after expiration of this License. Requirements of the federal Occupational Safety and Health Administration (OSHA) and the California Division of Occupational Safety and Health (CAL-OSHA), whichever is stricter, shall be adhered to at all times during any activities on the Property by Licensee and its contractors or other representatives. Licensee shall have a safety and injury prevention program in place for the construction, installation, operation and maintenance of the Communications Facility and work on the Property, if required by laws or regulations. If required by law or regulation, a copy of any such program shall be on the Property at all times.

Section 12. Removal & Restoration. Prior to the expiration of the License or within thirty (30) days of the earlier termination of the License, Licensee shall (1) remove all of the Communications Facility at its sole expense and (2) repair any damage to the Licensed Area caused by such removal and shall return the Licensed Area to the condition which existed before the Effective Date, reasonable wear and tear excepted. If the Licensee fails to remove its Communications Facility and restore the Licensed Area as required by this Section, the City may complete or cause to be completed the work, and Licensee shall reimburse the City for such invoiced costs within thirty (30) days of receipt.

Section 13. Prior Communications Facilities on Property, City Communications Systems; Non-interference.

Section 13.1 Licensee acknowledges and understands that there may be communications facilities on Property belonging to one or more third parties (referred to as the “Prior User(s)”) that has entered into an agreement(s) (the “Prior Use Agreement(s)”) with City, pursuant to which the Prior User(s) has(ve) been permitted to install and operate communications equipment on the Property. Where applicable, Licensee represents and warrants that prior to the execution of this License, Licensee has determined that the Prior Users present no material interference with Licensee’s intended use within the Licensed Area.

Section 13.2 Licensee shall operate the Communications Facility in a manner that will not cause harmful interference to (i) the City’s use of the Property, or (ii) any communications equipment operated and/or owned by the Prior User(s) as of the Effective Date, provided that the Prior User(s) operates its communications equipment in accordance with the terms of the Prior Use Agreement(s). If Licensee’s Communications Facility causes such harmful interference,

Licensee will immediately take all steps necessary to correct and eliminate the interference, including but not limited to, at Licensee's option, powering down such equipment and later powering up such equipment for intermittent testing. If such interference cannot be corrected or powered down within two (2) days after Licensee is advised of such interference, City may require that Licensee cease (or cause the cessation of) operation of the interfering equipment until such interference can be so corrected at which time the operation of such equipment may resume.

Section 13.3 Licensee further acknowledges that City assumes no risk or liability for any interference with Licensee's use of the Property which results from the operation of communications equipment on the Property by the Prior User(s) under the Prior Use Agreement(s) and agrees that City shall be held harmless from claims due to any such interference, pursuant to the indemnification terms set forth in Section 18 herein.

Section 13.4 City reserves the right to license other portions of the Property to third parties during the License Term and Renewal Term, if applicable. If, subsequent to the installation of the Communications Facility, the new third party equipment on the Property causes harmful interference with the Communications Facility, Licensee shall use its best efforts to resolve the interference issues in cooperation with the owner and operator of the new equipment without involving City personnel. If any such subsequent users cannot correct such harmful interference within ten (10) business days of Licensee's written notification thereof to City, Licensee may terminate this License upon sixty (60) days written notice to City and obtain a refund of prepaid unused amounts of the License Fee, or seek injunctive or other legal relief against/from such subsequent third party users. The refund shall be Licensee's sole and exclusive remedy and recovery as against City for any interference, and Licensee hereby waives any other rights or remedies it may have at law or in equity against City related thereto. The parties recognize and agree that it is the intention of this Section 12 that City not become embroiled in any disputes or proceedings between Licensee and any other users of the Property, and/or expend funds as a result thereof; therefore, Licensee agrees to indemnify, defend, and hold harmless the City against any claim related to or arising from any disputes or proceedings between Licensee and any other users of the Property.

Section 13.5 Nothing contained in this Section 14 or elsewhere in this License is intended to confer any rights or remedies under, or by reason of this License on, or waive any claims against, or adversely affect any rights of, any person or entity other than the parties hereto.

Section 14. Performance Bond. On or before the Effective Date, Licensee shall obtain a faithful performance bond, in the amount adequate to cover one hundred percent (100%) of the costs to remove the Communications Facility and all other personal property and to restore the Property as required by this License from a bond company duly licensed to do business in California in favor of City (the "Bond"). The Bond shall secure (1) Licensee's removal of its equipment from the Licensed Area following the expiration or earlier termination of the License,

and (2) the recovery of any unpaid sums duly owed to the City under this License. The Bond shall be maintained in force by Licensee throughout the License Term and Renewal Term, if applicable. Licensee agrees to deliver to City a copy of the Bond prior to commencement of construction activities on the Licensed Area (or if the License is a renewal for a previously constructed facility, prior to full execution of the License). Prior to the commencement of any Renewal Term, City and Licensee shall review the amount of the Bond to assess whether the amount of the Bond is reasonably sufficient to cover then current removal and restoration costs. If it is reasonably determined to be insufficient, Licensee shall obtain and maintain in force a Bond for such additional amount that City reasonably determines to be sufficient.

Section 15. Environmental.

Section 15.1 For purposes of this License, the term “Hazardous Substances” means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended; or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

Section 15.2 Except as otherwise specifically permitted under the terms of this License, Licensee shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within the Property or Licensed Area in violation of any federal, state, or local law, rule, regulation, order, decree or other requirement listed in this Section 16. Batteries for emergency power and fuel for temporary generators during power outages may only

be used or stored on-site with the prior written approval of City. On site use, but not storage, of ordinary paints, solvents and similar substances commonly used in small quantities and necessary for maintenance of Licensee's Communications Facility are excepted from the preceding prohibition of use by Licensee of Hazardous Substances on the Licensed Area and the Property, so long as Licensee complies with all applicable federal, state and local laws rules and regulations governing the use of such items.

Section 15.3 Unless listed in **Exhibit B**, no underground or above ground storage tanks shall be installed on Licensed Area.

Section 15.4 City or its officers, employees, contractors, or agents shall at all times have the right to go upon and visually inspect the Licensed Area and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may also include taking samples for chemical analysis of substances and materials present and/or testing soils on the Licensed Area and taking photographs. Except in case of emergency, City will not take samples or test soils on the Licensed Area without providing Licensee with reasonable notice and the opportunity to have a representative present.

Section 15.5 Licensee shall, within forty-eight (48) hours of the discovery by Licensee of the presence of, or believed presence of, a Hazardous Substance as defined herein, give written notice to City in the event that Licensee knows or has reasonable cause to believe that any release of Hazardous Substance has come or will come to be located on, under, about or within the Licensed Area. The failure to disclose in a timely manner the release of a Hazardous Substance by Licensee, including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law (e.g., California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550 et seq.) shall be grounds for termination of this License by City in addition to actual damages and other remedies provided by law. Licensee shall immediately clean up and completely remove all Hazardous Substances placed by Licensee on, under, about or within the Licensed Area or the Property, in a manner that is in all respects safe and in accordance with all applicable laws, rules and regulations.

Section 15.6 In the event Hazardous Substances are discovered, Licensee shall disclose to City the specific information regarding Licensee's discovery of any Hazardous Substances placed on, under, about or within the Licensed Area or the Property by Licensee, and provide written documentation of its safe and legal disposal.

Section 15.7 Breach of any of these covenants, terms, and conditions, and Licensee's failure to cure within thirty (30) days of Licensee's receipt of written notice from City, shall give City the authority to either immediately terminate this License or to shut down Licensee's operations thereon, at the sole discretion of City. In either case, Licensee will continue to be liable under this License to remove and mitigate all Hazardous Substances placed by Licensee on, under, about or within the Licensed Area or the Property. Licensee shall be responsible for, and bear the

entire cost of removal and disposal of, all Hazardous Substances introduced to the Licensed Area or the Property by Licensee during Licensee's period of use and possession of the Licensed Area. Upon termination of this License, Licensee shall, in accordance with all laws, remove from the Licensed Area any equipment or improvements placed on the Licensed Area by Licensee that may be contaminated by Hazardous Substances.

Section 15.8 Licensee shall defend, indemnify and hold City and its officials, officers, employees, contractors and agents free and harmless from any and all claims, liability, injury, damage, costs, fines, or expenses (including, without limitation, the cost of attorney's fees) arising as a result of the presence of use of any Hazardous Substances placed or caused to be placed by Licensee or its partners, affiliates, agents, officials, officers, contractors or employees on the Licensed Area or the Property. City shall defend, indemnify and hold Licensee and its officials, officers, employees, contractors and agents free and harmless from any and all claims, liability, injury, damage, costs, fines, or expenses (including, without limitation, the cost of attorney's fees) arising as a result of the presence of use of any Hazardous Substances placed or caused to be placed by City or its partners, affiliates, agents, officials, officers, contractors or employees on the Property. The foregoing indemnity is intended to operate as an agreement pursuant to, among other requirements, Section 107, subdivision (e) of CERCLA, 42 United States Code Section 9607, subdivision (e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify each party from any liability created by the other party pursuant to such sections.

Section 16. Insurance. During the life of this License, Licensee shall pay for and maintain in effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City Administrative Officer or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

Section 16.1 COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the License) with limits of liability of the following:

- \$2,000,000 per occurrence for bodily injury and property damage
- \$1,000,000 per occurrence for personal and advertising injury
- \$4,000,000 aggregate for products and completed operations
- \$4,000,000 general aggregate

Section 16.2 COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of \$2,000,000 per accident for bodily injury and property damage.

Section 16.3 WORKERS' COMPENSATION insurance as required under the California Labor Code.

Section 16.4 EMPLOYERS' LIABILITY insurance with limits of liability of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Section 16.5 PROPERTY insurance against all risks of loss to the Communication Facility, at full replacement costs with no coinsurance penalty provision.

Section 16.6 In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Section 16.7 Licensee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Administrative Officer or his/her designee in his/her sole discretion. At the option of the City Administrative Officer or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to the City Administrative Officer or his/her designee in his/her sole discretion, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Section 16.8 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, or non-renewed, except after thirty (30) calendar day written notice has been given to City if not replaced. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this License, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Section 16.9 The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing operations and

completed operations) and Automobile Liability insurance policies shall include City, its officers, officials, employees, agents and volunteers as an additional insured by endorsement as respects this agreement. All such policies of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of City, its officers, officials, employees, agents or volunteers. To the extent permitted by law, Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, employees, agents and volunteers. The Property insurance policy shall name the City as a joint loss payee. The coverage(s) shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Should Licensee maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Section 16.10 Licensee and its insurers shall waive all rights of contribution, recovery and subrogation against City, its officers, officials, employees and agents on account of any injury, death or property damage to any person, including any injury or death to the Licensee, its principles, officers, employees, agents, contractors, subcontractors, consultants, sub-consultants, invitees, or Licensee's property or the property of others under Licensee's care, custody and control. Licensee shall give notice to its insurers that this waiver of subrogation is contained in this License. This requirement shall survive expiration or termination of this License.

Section 16.11 Licensee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City prior to City's execution of this License.**

Section 16.12 If at any time during the life of this License or any extension, Licensee or any of its contractors, subcontractors, consultants or sub-consultants fail to maintain any required insurance in full force and effect, all work under this License shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this License. No action taken by City hereunder shall in any way relieve Licensee of its responsibilities under this License.

Section 16.13 The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or

purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, its principals, officers, agents, employees, persons under the supervision of Licensee, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Section 16.14 If it is necessary for Licensee to contract for the design, construction and/or maintenance of the Communication Facility, Licensee shall endeavor to require each consultant and contractor to provide insurance protection that includes City, its officers, officials, employees, agents and volunteers as additional insured by endorsement as respects this agreement.

Section 17. Indemnification. To the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend City and its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Licensee, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Licensee's: (i) occupancy, maintenance and/or use of the Licensed Area and/or Communications Facility; or (ii) performance of, or failure to perform, this License. Licensee's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of City or its officers, officials, employees, agents or volunteers.

Section 17.1 Licensee's occupancy, maintenance and use of the Licensed Area and Communications Facility shall be at Licensee's sole risk and expense. Licensee accepts all risk relating to Licensee's: (i) occupancy, maintenance and/or use of the Licensed Area and/or Communications Facility; and (ii) the performance of, or failure to perform, this License. City shall not be liable to Licensee or Licensee's insurer(s) for, and Licensee and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Licensed Area in any way related to the Licensee's operations and activities. Licensee shall immediately notify City of any occurrence on the Premises resulting in injury or death to any person or damage to property of any person.

Section 17.2 If it is necessary for Licensee to contract for the design, construction and/or maintenance of the Communication Facility, Licensee shall require each consultant and contractor to indemnify, hold harmless, defend and release City and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs. The section shall survive termination or expiration of this License.

Section 18. Jurisdiction and Venue. This License shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret

or enforce this License, or which in any way arises out of the Parties' activities undertaken pursuant to this License, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Permittee expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

Section 19. Entire Agreement; Amendment. This License constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and agreements made prior to the date hereof. In the event there is an existing lease or license between Licensee (or its predecessor-in-interest) and City covering the Licensed Area, it is agreed and understood that this License shall cancel, supersede and terminate said prior lease or license as of the Effective Date of this License. This License may not be modified except in a writing executed by both parties.

Section 20. Paragraph Heading and Construction. The section headings contained in this License shall not be considered to be a part hereof for purposes of interpreting or applying this License, but are for convenience only.

Section 21. Binding on Successors; No Third-Party Beneficiaries. This License, and all of the provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. No customer, other person or entity other than the parties shall be deemed to be a third-party beneficiary hereof, and nothing in this License, either express or implied, is intended to confer upon any customer or other person or entity, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this License.

Section 22. Independent Contractors. Licensee's contractors, agents and representatives are independent contractors of Licensee, and are not employees or independent contractors of City while on the Property, or while engaged in any work on the Property, including the construction, installation, maintenance or operation of the Communications Facility.

Section 23. Limited Assignment/ Sub-licensing.

Section 23.1 This License, or the license interest of Licensee in the Property, shall not be assigned by Licensee except with the prior written consent of City which consent may be withheld in the City's sole discretion.

Section 23.2 Licensee may, without City's consent but upon at least sixty (60) days prior written notice to City, from time to time assign this License in its entirety (i) to any entity which

has, directly or indirectly, a fifty-one percent (51%) or greater interest in Licensee (a “Parent”), or to any entity in which Licensee or a Parent has a fifty-one percent (51%) or greater interest. Any such assignment shall not be effective unless and until the assignee executes and delivers to City a written assumption of all Licensee’s obligations under this License.

Section 23.3 Licensee may sublicense the Licensed Area to any qualified third party communications provider consistent with this License and subject to the advance written consent of City, which consent may be withheld in the City’s reasonable discretion. Prior to doing so, Licensee shall notify City. Upon execution of such sublicense, Licensee shall pay City as additional rent fifty percent (50%) of all revenue received from such sublicensee (“Collocation Fee”). The Collocation Fee shall be paid in the same manner and subject to the same requirements and conditions as the License Fee. However, in no event shall the Collocation Fee be less than Fourteen Thousand Five Hundred Dollars (\$14,500) per annum. This minimum amount shall be adjusted through the term of this License in the same manner as the License Fee. Moreover, in the event that such sublicensee requires additional ground space outside of the Premises, it shall enter into a separate license with City to do so or this License may be amended to provide for such additional space. City may grant or deny such requests in its sole discretion, including conditioning execution of such new or amended agreements on the payment of additional rent.

Section 23.4 Any attempted or unauthorized assignment or sub-license shall be void and shall be cause for immediate termination of this License by City. The acceptance of License Fees by City from any person other than Licensee or an authorized assignee shall not be deemed to be a waiver by City of any provision hereof. Consent to one assignment shall not be deemed consent to any subsequent assignment.

Section 24. Attorneys’ Fees. Should either party institute arbitration or legal or other proceedings against the other for or on account of its failure or refusal to perform or fulfill any of the covenants or conditions of this License on its part to be performed or fulfilled, then the prevailing party in such action or proceeding shall receive from the other party attorney’s fees and costs as adjudged reasonable by the arbitrator, or court.

Section 25. Notice. All notices, requests, and demands hereunder will be given in writing 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, requests and demands will be addressed to the parties as follows:

Licensee Site Name: SCE PHILADELPHIA
Fixed Asset No: 10102101
Site Address: 14000 Philadelphia, Fontana, CA 92337

If to Licensee:

New Cingular Wireless PCS, LLC
Attn: TAG – LA
Re: Cell Site #: CLU4472
Cell Site Name: SCE Philadelphia (CA)
Fixed Asset #: 10102101
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: CLU4472
Cell Site Name: SCE Philadelphia (CA)
Fixed Asset #: 10102101
208 S. Akard Street
Dallas, Texas, 75202-4206

If to City:

City of Fontana
Attn: City Manager
8353 Sierra Ave
Fontana, CA 92335
rebert@fontanaca.gov

Either party may change the address or persons to which notices are to be sent to it by giving thirty (30) days' prior written notice of such change to the other party in the manner provided herein.

Section 26. Counterparts. This License may be executed in counterparts, each of which shall be deemed to be an original.

Section 27. Representations and Warranties. Each party represents and warrants that this License constitutes a legal, valid and binding obligation of such party, and is enforceable against such party in accordance with the terms set forth in the License. Licensee acknowledges and agrees that Licensee is not entitled to relocation assistance, or any other benefits under the Uniform Relocation Assistance Act, or any other applicable provision of law upon termination of this License.

Section 28. NO WARRANTY

LICENSEE’S RIGHT TO USE THE LICENSED AREA AND THE PROPERTY IS STRICTLY ON AN “AS IS” BASIS WITH ALL FAULTS. CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE PRESENT OR FUTURE CONDITION OF OR SUITABILITY OF THE PROPERTY OR THE LICENSED AREA FOR LICENSEE’S USE AND DISCLAIMS ANY AND ALL WARRANTIES EXPRESS OR IMPLIED WITH RESPECT TO THE PHYSICAL, STRUCTURAL, OR ENVIRONMENTAL CONDITION OF THE PROPERTY, AND LICENSED AREA AND THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE IS SOLELY RESPONSIBLE FOR INVESTIGATION AND DETERMINATION OF THE CONDITION AND SUITABILITY OF THE PROPERTY, AND LICENSED AREA FOR LICENSEE’S INTENDED USE.

Section 29. Taxes. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Licensee acknowledges that this License may create a possessory interest and Licensee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Licensee shall pay, when due, all real and personal property taxes, fees and assessments, assessed against the Licensed Area and the Communications Facility and shall reimburse City for any increase in real property or possessory interest taxes levied against the Property as a result of the improvements constructed by Licensee on the Licensed Area only for so long as this License has not expired of its own terms or is not terminated by either party.

Section 30. Time. Time is of the essence of this License.

Section 31. Incorporation of Recitals. All of the recitals hereof are incorporated by this reference and are made a part hereof as though set forth at length herein.

Section 32. Survival. All terms that by their nature should survive termination of this License shall survive, including but not limited to payment of amounts owed and indemnification obligations.

Section 33. The following exhibits are incorporated in this License:

Exhibit A Property- Legal Description

Exhibit B Description - Communications Facility (Equipment List) and Licensed Area (Site Plan)

Section 34. Binding Authority/Authorized Representatives. Each of the parties represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its obligations hereunder and that those obligations will be binding upon that party without the

Licensee Site Name: SCE PHILADELPHIA
Fixed Asset No: 10102101
Site Address: 14000 Philadelphia, Fontana, CA 92337

approval or consent of any other person or entity. Each person executing this License represents and warrants he/she has been duly authorized to execute the same.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this License as of the latter date written below.

“City”:

**CITY OF FONTANA,
a municipal corporation**

“Licensee”:

**NEW CINGULAR WIRELESS PCS,
LLC,
a Delaware limited liability company**

**By: AT&T Mobility Corporation
Its: Manager**

By: _____
City Manager

Date: _____

By: _____

Title: _____

Date: _____

Licensee Site Name: SCE PHILADELPHIA
Fixed Asset No: 10102101
Site Address: 14000 Philadelphia, Fontana, CA 92337

Exhibit A Property- Legal Description

Lot 44 of Tract No. 12064-1, in the City of Fontana, County of San Bernardino, State of California, as per Map recorded in Book 167, Pages 29 through 49, inclusive of Maps, in the Office of the County recorder of said County.

Excepting therefrom an undivided ½ interest in and to all oil, gas, petroleum, all kindred substances, precious metals, ores, asphaltum, minerals, whether known or unknown, and any other hydrocarbon substances lying below a depth of five hundred (500) feet, measured vertically from the surface of the land, but without any right of surface entry to take or recover same, as reserved by H. Takanaga Farms, Inc., a California Corporation, in the deed recorded January 10, 1983 as Instrument No. 83-5299 of Official Records.

APN: 0236-225-21

Licensee Site Name: SCE PHILADELPHIA
Fixed Asset No: 10102101
Site Address: 14000 Philadelphia, Fontana, CA 92337

Exhibit B Description - Communications Facility (Equipment List) and Licensed Area
Depiction (Site Plan)