

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

This License Agreement for Wireless Installations on Public Structures ("Agreement") is made and entered into as of this 13<sup>th</sup> day of August, 2019 (the "Effective Date"), by and between the **CITY OF SALINAS**, a California Municipal Corporation ("Licensor") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company ("Licensee").

**RECITALS**

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

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

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

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

**1. GRANT OF LICENSE**

1.1 Grant of License. Licensor hereby grants Licensee a license for Licensee's use of Licensed Sites throughout the City of Salinas, and provides the right, as necessary, to utilize, replace or upgrade Licensor's Structures and Infrastructure in accordance with the terms and conditions of this Agreement, as provided herein, and as provided in the individual Site Licenses signed by Licensor pursuant to this Agreement. The license granted herein is revocable only in accordance with the terms and conditions of the Agreement. No use of Licensor's Structures or Infrastructure under this Agreement shall create or vest in Licensee any ownership or property rights in such Structures or Infrastructure. Nothing in this Agreement grants Licensee the right to make any Wireless Installation, or to install other facilities, including Wireless Installations, that do not conform to this Agreement.

1.2 Permitted Use. Licensee may use Licensor's Structures and Infrastructure for the Permitted Use, subject to the terms and conditions of this Agreement.

1.3 Agreement Term. This Agreement shall commence as of the Effective Date, and, if not lawfully terminated sooner, remain in full force and effect for the Agreement Initial Term. This Agreement will automatically renew for one (1) five (5) year renewal term, unless either Party provides written notice of termination to Licensor at least ninety (90) days prior to the expiration of the Agreement Initial Term.

1.4 Site License Term. The term for each individual Site License shall commence on the Commencement Date and shall be coterminous with the Term of this Agreement. Subject to the terms of Section 13.5 of this Agreement, following the expiration of this Agreement, each Site License entered into hereunder shall survive and continue for an additional period of five (5) years thereafter (the "Amortization Period"). No Amortization Period shall be provided if this Agreement is terminated pursuant to Section 13.4(c) or 13.4(d) of this Agreement.

**2. SCOPE OF LICENSE**

2.1 Scope of License Generally. Licensor acknowledges that Existing Laws specify the appropriate level of RF Emissions, as well as prohibit Licensor from enacting any policies which prohibit or effectively prohibit the installation of wireless telecommunications networks. Licensee shall not have a presumed right to construct Wireless Installations at the time and place of its choosing unless it can demonstrate to the satisfaction of the Licensor that, due to peculiarities of the requested Licensed Site, it is impractical to comply with the requirements of this Agreement. In that scenario, Licensor and Licensee shall work together to identify Licensed Sites and Wireless Installations that will achieve the highest degree of compliance possible while not effectively prohibiting installation.

2.2 Standards for Construction. Except as provided in Section 2.1, above, Licensee shall install all Wireless Installations and Infrastructure in accordance with the following:

(a) Wireless Installations and Infrastructure shall be installed in accordance with Licensor's "Dig Once" Policy, including requirements for method of installation and notification of third parties. Licensee acknowledges that it may be necessary to utilize existing conduit or fiber lines if Infrastructure serving a proposed Wireless Installation cannot otherwise be installed without violating Licensor's "Dig Once" Policy.

(b) Design of Wireless Installations and Infrastructure. Wireless Installations and Infrastructure shall be installed in accordance with the Design Standards specified in City Regulations, as they may be amended from time-to-time. Current City Regulations include City of Salinas Resolution No. 21580, a copy of which is attached hereto as Exhibit 2.

2.3 Pre-Approved Designs. Licensee may request that Licensor approve designs where both Licensee and Licensor mutually agree that the design would have broad applicability throughout the city. The City Manager or his/her designee shall have the authority to approve of these designs. This approval may include restrictions regarding the geographic area, type of Structure, and/or types of adjacent land uses for which the Pre-Approved Design is appropriate. Once a Pre-Approved Design has been approved by Licensor, Licensee may continue to utilize this design in future Permit applications. Items covered by the Pre-Approved Design shall be deemed compliant by Licensor unless specifically prohibited by Law (including any New Law). Further, applications utilizing Pre-Approved Designs shall be eligible for Expedited Processing, as defined in Section 4.3 below.

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

#### **3.1 Annual License Payment.**

(a) Licensee shall pay Licensor Seven-Hundred Fifty and No/100 Dollars (\$750.00) per Wireless Installation located at a Licensed Site (the "License Payment"). The License Payment is per Wireless Installation, and includes all Structure, Infrastructure, appurtenant equipment and facilities used in connection with each Wireless Installation.

(i) Payments will normally accrue on July 1<sup>st</sup> of each year for the upcoming year running July 1<sup>st</sup> to June 30<sup>th</sup>. The License Payment for newly constructed Wireless Installations is due within 60 days of the Commencement Date at the Licensed Site and will be prorated for the remainder of the Fiscal Year through June 30<sup>th</sup> based on a 360-day calculation.

(ii) Notwithstanding the foregoing, the Parties acknowledge that this License Payment is prohibited under the Federal Communications Commission's Declaratory Ruling and Third Report and Order, FCC 18-133 (the "Order"), and is not collectible while said Order is in effect. Licensee shall not be required to submit License Payments so long as said Order remains in effect and continues to prohibit said License Payments. In the event that said Order is reversed, repealed, amended, or modified (collectively, a "Modification") by the FCC, Federal Government, court, or other governmental body of competent jurisdictions in such a manner that the City is legally permitted to collect this License Payment (or a portion thereof), License Payments for each Wireless Installation shall be due on a prorated basis in the manner described in subsection (a) above as of the effective date of said Modification; provided, however, that if, within 90 days of the effective date of said Modification, enforcement of the Modification is enjoined, or if the Modification is stayed on appeal, the License Payment shall continue to be abated until such time as the injunction is lifted or pending appeal is fully adjudicated, as applicable. If said Modification is enjoined or stayed as described above more than 90 days following the effective date of said Modification, then License Payments shall be due on a pro-rated basis (based on a 360-day calculation) for the time period between the effective date of the Modification and the effective date of the injunction or stay.

(iii) Licensor shall have no right to collect, and hereby forfeits, any License Payments which would otherwise be due prior to the effective date of the Modification.

(b) In addition to the License Payments, Licensee is also required to pay an annual monitoring fee (the "Monitoring Fee"), which is currently set at Two Hundred Seventy and No/100 Dollars (\$270.00) pursuant to City of Salinas Resolution No. 21581, a copy of which is attached hereto as Exhibit 3. If the Licensee is required to pay both an ongoing annual Monitoring Fee and a License Payment, the amount of the License Payment shall be reduced by an amount equal to the Monitoring Fee paid, up to a maximum of fifty percent (50%) of the License Payment due. In no case shall the Monitoring Fees be waived, nor the License Payment be reduced by more than fifty percent (50%) of its then-current amount. In the event that a subsequent legal or regulatory requirement becomes effective that would constrain or otherwise limit the Fees that the City may charge Licensee for the right to place Wireless Installations on the City's Structures, the parties agree that the Fees shall again be adjusted to comply with such legal or regulatory requirement upon its effective date.

(c) If Licensor enters into any agreement with or accepts an application from another entity for the lease or license of a Structure or Infrastructure that is substantially similar in build, location, and use to the Structures and Infrastructure covered by this Agreement for the construction, operation, maintenance, repair or replacement of a Wireless Installation, and that agreement places Licensee, in its discretion, at a competitive disadvantage in light of the rates and terms and conditions established in this Agreement, Licensor agrees (following receipt of written notice from Licensee) to promptly negotiate with Licensee in good faith to review and revise the rates and/or terms and conditions in this Agreement, as necessary, to reasonably address such disadvantage.

(d) On July 1<sup>st</sup> of each year during the Term of all Site Licenses, the License Payment due for the upcoming year shall increase by two-and-one-half percent (2.5%) over the License Payment paid during the previous year.

3.2 Payment of Fees. Licensor retains the right to charge fees to cover its actual costs relating to the administration of the terms of this Agreement, including, but not necessarily limited to, Permit Application Fees, Inspection Fees, and ongoing Monitoring Fees. These fees shall be adopted by the Licensor's City Council. Upon request, Licensor shall provide to Licensee any analysis performed to demonstrate that these fees represent Licensor's actual costs, provided, however, that Licensee shall not question any Fee amounts equal to or less than those deemed reasonable by Law. In the event that a subsequent legal or regulatory requirement becomes effective that would constrain or otherwise limit the Fees that the City may charge Licensee for the right to place Wireless Installations on the City's Structures, the parties agree that the Fees shall again be adjusted to comply with such legal or regulatory requirement upon its effective date.

3.3 License Payments and Fees for new Licensed Sites. Licensee shall submit the first annual Monitoring Fee payment and first License Payment (as applicable pursuant to Sections 3.1 and 3.2 above) for each functioning Licensed Site within sixty (60) days of the Commencement Date at the Licensed Site (prorated for the period between the Commencement Date and June 30<sup>th</sup> of that year).

3.4 Annual Billing and Payment Generally. License Payments and Fees due on an annual basis shall be due on September 1 of each year unless otherwise specified. Payments received after this date shall be subject to a 1% penalty on the unpaid balance, with an additional 1% penalty accrued on the first day of every following month.

#### **4. PERMITTING PROCESS**

4.1 Potential Licensed Site Pre-Application. At its discretion, prior to submitting a formal application for any Licensed Site, Licensee may submit to Licensor a list of potential Licensed Sites to Licensor. Licensor shall promptly review said list to identify any sites that, in the reasonable opinion of Licensor, includes specific characteristics which make the installation of Licensee's Structures and Equipment inappropriate for that location. Information to be submitted shall include the information

identified in Exhibit 4 of this Agreement (in a form to be provided by Licensor), as well as a recent photograph of the Structure and a visual representation of the design of the Wireless Installation. Criteria used to determine whether a potential Licensed Site is appropriate may include, but is not necessarily limited to:

- (a) The type of Structure (e.g. street light) upon which the Wireless Installation will be mounted;
- (b) The existence of physical characteristics of the Licensed Site or Structure which render infeasible the addition of Licensor's Structures in a safe or effective manner;
- (c) The presence of an existing Wireless Installation on the Structure;
- (d) The current or planned use of the Structure by Licensor;
- (e) The creation of any significant aesthetic impacts to a streetlight utilizing a non-standard or decorative design (unless the Wireless installation employs design features that in the reasonable opinion of Licensor successfully mitigates any adverse aesthetic impacts); or
- (f) The necessity of performing underground work to support the Wireless Installation when such work is prohibited by Licensor's "Dig Once" Policy.

Information provided to the Licensee pursuant to this process shall not be deemed to constitute an "approval" or "denial," but is instead designed to alert the licensee to issues which may have an impact on the outcome of a Permit request.

4.2 Processing of Licensed Site Pre-Application. Unless Laws provide otherwise, Licensor shall notify Licensee within 15 working days whether there are any known factors, including those above, which would render a Wireless Installation inappropriate at a given Structure. If more than ten Wireless Installations are requested within this 15-working-day period (whether submitted at once or over a period of time), the notification period shall be increased by one day for each additional Wireless Installation requested, provided also that Licensor shall always have a minimum of 15 working days from the date of submittal to the date of response.

4.3 Permitting. At any desired time, Licensee may submit a Small Wireless Facility Encroachment Permit ("SWFEP") application for each Wireless Installation to Licensor in a form provided by Licensor. Licensor shall make available to Licensee a written list of materials and information necessary to be included with the submitted application to enable Licensor to expeditiously process the application. SWFEP applications shall be processed in accordance with all lawful City policies and regulations, including those regarding processing times and appeal procedure, as such may be amended from time-to-time ("City Regulations"). Current City Regulations are attached as Exhibit 2 of this Agreement. Licensee will identify in the SWFEP Application any Licensor Work it believes needs to be performed in connection with Licensee's use of the Structure and/or Infrastructure. The SWFEP Application review will include an evaluation of whether the site is appropriate for a Wireless Installation utilizing the same criteria described in Sections 2.2 and 4.1 of this Agreement. The Licensee shall also include the appropriate Permit Application Fees as adopted and published by Licensor. Licensor will process each of these applications and, if the application is found to be complete, shall render a decision within 30 calendar days of receipt. As used in this Agreement, "Expedited Processing" shall mean an application that involves a Wireless Installation and Structure utilizing a Pre-Approved Design in accordance with this Agreement. Applications eligible for Expedited Processing shall be processed by Licensor within 10 working days of receipt at no additional cost. In the event a large number of applications are submitted within a short time period, Licensor may notify Licensee of its inability to meet this timeframe, and shall notify Licensee of the expected date of completion.

4.4 Inspection of Permitted Licensed Site. Upon approval of a SWFEP, Licensee shall remit to Licensor any required Inspection and/or prorated Monitoring Fees. Upon payment of these Fees, Licensee may commence construction of the Wireless Installation. No work requiring a Permit shall begin until Permits have been obtained. At the required intervals during construction, and upon completion of



work, Licensee shall request, and Licensors will cause to be performed, inspections of the work actually done to ensure compliance with appropriate Permits and Ordinances. Licensee shall cause to be prepared an analysis indicating that the Wireless Installation does not cause ambient RF Emissions to exceed thresholds established by the FCC in any locations that may be reasonably expected to be accessed by the public, including nearby private property such as homes and businesses. Upon approval of the final inspection for the installation of the Wireless Installation, a Site License from Licensors to Licensee shall be immediately granted for the Wireless Installation, and Licensors shall within five business days provide written certification of this Site License to Licensee in the form attached as Exhibit 5. Delivery shall be made to Licensee's point of contact provided in this Agreement unless Licensee requests an alternative delivery arrangement.

4.5 Ongoing Monitoring. Licensors may enact such reasonable policies, programs, and requirements as it deems appropriate to document that requirements relating to maintenance, aesthetics, RF Emissions, and other requirements are being met, provided such policies, programs, and requirements are non-discriminatory, competitively neutral, and otherwise consistent with applicable Law.

4.6 Modifications and Replacements. Except for any Wireless Installation installed upon a decorative Structure or upon a Structure located within either a scenic or historic district, subsequent to the original Wireless Installation approved by Licensors, Licensee may, without submitting a new application, modify or replace all or a portion of the Wireless Installation so long as such modification or replacement is consistent with the criteria specified in Exhibit 2.

## **5. LICENSOR WORK FOR STRUCTURES AND INFRASTRUCTURE**

5.1 Licensors Work. At the time of approving the SWFEP, Licensors will advise Licensee whether Licensors is willing to perform Licensors Work identified in the SWFEP application. If Licensors indicates it is willing to perform the Licensors Work, Licensors will provide Licensee with a Licensors Work Cost Estimate within fourteen (14) days of the approval of the SWFEP, unless Laws provides a different deadline. Licensee shall have sixty (60) days from the receipt of such a Licensors Work Cost Estimate to accept the estimate, unless Laws provide a different deadline.

5.2 Licensors Work Timeline. Licensors will begin Licensors Work promptly after it has received Licensee's Approved Licensors Work Cost Estimate and full payment thereof and complete all Licensors Work within sixty (60) days thereafter. If Licensors does not indicate that it is willing to perform the Licensors Work, Licensee may perform the Licensors Work itself.

5.3 Licensors Work Reconciliation. If the actual and reasonable costs incurred by Licensors in completing a Licensors Work exceed the pre-paid Approved Licensors Work Cost Estimate, Licensee shall pay Licensors the shortfall amount of such costs within ninety (90) days of receipt of the invoice accompanied by reasonable substantiation. If such Licensors Work costs are less than the pre-paid Approved Licensors Work Cost Estimate, Licensors will refund the excess Licensors Work payment to Licensee within ninety (90) days following completion of the Licensors Work. No interest shall accrue on any Licensee overpayment or underpayment for Licensors Work.

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

## **6. GENERAL LICENSEE OBLIGATIONS**

6.1 Technical Requirements and Specifications. At its own expense, Licensee shall erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with (a) the requirements and specifications of Building, Electrical, and other Safety Codes; (b) Licensors's reasonable standards, and (c) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction. Changes to the requirements, specifications, standards, rules and orders in subsections (a), (b) and (c) shall not apply retroactively unless

required by Laws, and Licensor shall give at least sixty (60) days' written notice of changes to the standards in subsection (c).

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

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

## **7. UTILITIES.**

7.1 Utilities. Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with Wireless Installations. Licensee shall be responsible for obtaining electrical service for the Wireless Installation, whose electrical usage shall be separately metered.

## **8. OPERATION AND MAINTENANCE**

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

### **8.2 Interference.**

(a) Licensee will operate its Wireless Installations in compliance with all FCC regulations regarding Interference with the radio signal transmissions of Licensor and other third parties in or upon a Structure, which transmissions are operated in compliance with Laws.

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

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

## 9. RELOCATION AND ABANDONMENT

9.1 Relocation for Public Improvement Projects. In the event Licensor desires to replace, relocate, modify, demolish, or in any way alter the Structure and/or Infrastructure in connection with a Public Improvement Project in a manner likely to cause Interference with Licensee's Wireless Installation, Licensor shall have the right to cause Licensee to relocate the Wireless Installation subject to the terms and conditions set forth herein; provided, however, Licensor shall use reasonable efforts to fully accommodate Licensee's continuing use of the Structure and/or Infrastructure, as the case may be, without relocation if it is reasonably possible to do so.

(a) Relocation. If Licensor's Public Improvement Project requires Licensee to relocate its Wireless Installation from all or any portion of the Structure and/or Infrastructure, Licensor shall have the right to require Licensee to relocate the Licensed Space upon the following terms and conditions: (i) Licensor shall deliver to Licensee a Relocation Notice to relocate the Wireless Installation; (ii) Licensor shall work with Licensee to identify potential Relocation Licensed Sites to assist Licensee in finding a Relocation Licensed Site which provides substantially similar signal coverage for the Wireless Installation as that of the Licensed Site being relocated; (iii) such relocation will be performed exclusively by Licensee with costs allocated in accordance with Laws; (iv) Licensee may operate a temporary cell site (if feasible in a mutually agreeable location in the vicinity of the Licensed Space) during such relocation with no additional Fee due to Licensor; and (v) the License Payments applicable to such Licensed Space shall abate until the Wireless Installation achieves full on-air operation in the ordinary course of Licensee's business in the Relocation Licensed Space. Licensee shall not be required to pay any additional application, review or other Licensor Fees in connection with any relocation initiated by Licensor; or, if Licensee is required to pay said Fees, Licensor shall reimburse Licensee for the amount of said Fees, either through a direct payment or a reduction in License Payments. If Licensee does not desire to establish a relocated site, then Licensee shall have the right to terminate the applicable Site License, and Licensee shall not be responsible for any License Payments or Fees following the date of termination.

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

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

## 10. INSURANCE

10.1 Certificate of Insurance. Licensee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Licensee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A VII and deliver to a Licensor a Certificate of Insurance evidencing the types of insurance and policy limits required.

10.2 Required Insurance. Licensee shall maintain the following insurance:

(a) Workers' Compensation and Employer's Liability insurance as required by statute, which currently require Employer's Liability limits of \$500,000 each accident, \$500,000 by disease policy limits, and \$500,000 by disease each employee. To the extent allowed by Laws, the policy must include a blanket waiver of subrogation in favor of Licensors.

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

\$2,000,000 General Aggregate Limit

\$1,000,000 Each Occurrence

\$1,000,000 Each Occurrence - Personal Injury and Advertising Injury

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

The required Commercial General Liability policy must include Licensors as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of Licensors.

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

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

## 11. LIMITATION OF LIABILITY.

11.1 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable for consequential, incidental, punitive, exemplary or indirect damages suffered by the other party or by any customer or any purchaser of such party or any other person, for lost profits or other business interruption damages, whether by virtue of any statute, in tort or in contract, except that the express indemnification obligations made by the parties in Section 12 of this Agreement shall still apply.

## 12. INDEMNIFICATION

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

12.2 Indemnification By Licensors. To the extent permitted by Laws and except for the waiver of subrogation granted by Licensee under Section 10.2(a) above, Licensors shall indemnify, hold harmless and, at Licensee's sole option, defend Licensee Indemnitees, and each of them, from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensee Indemnitees, and any of them, may incur, asserted by third parties against Licensee Indemnitees, or any of them, by reason of the negligent installation, operation, use, repair, or removal of Licensors's Structures and/or Infrastructure or breach of the terms of this Agreement by Licensors, including acts or omissions by its agents, contractors, or



subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensee Indemnitees, or any of them.

### **13. DEFAULT AND TERMINATION**

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

- (a) suspend Licensee's access to the Structure or Infrastructure to which the Default pertains;
- (b) terminate the specific Site License or affected portion thereof covering the Structure(s) or Infrastructure to which the Default pertains;
- (c) require Licensee's obligation to which the Default has been declared to be specifically performed;
- (d) maintain an action at law against Licensee for damages directly incurred by Licensors arising directly from Licensee's uncured Default; and/or
- (e) terminate this Agreement in accordance with Section 13.4 and 13.5, below.

13.2 Licensors Default and Licensee's Remedies. If Licensors does not cure its Default, then thereafter, Licensee may elect to pursue any rights or remedies available to Licensee at law or in equity, including termination of this Agreement as described in Section 13.3.

#### **13.3 Licensee Termination of Site License or Agreement.**

(a) This Agreement or any individual Site License may be terminated by Licensee for any reason or no reason, and without further liability to Licensee, at any time.

13.4 Licensors Termination of Agreement. Licensors may terminate this Agreement only for the following reasons:

- (a) Licensors has notified Licensee in accordance with the provisions of Section 2.1 of this Agreement that it does not wish to renew the Agreement for an additional Renewal Term;
- (b) Licensors's costs for the implementation and administration of this Agreement exceed its revenues in doing so, and Licensee is unwilling or unable to cover Licensors's actual costs. Such costs shall be calculated pursuant to a cost study which has been reviewed, adopted and approved by Licensors's City Council and is not subject to further appeals or subject to a complaint before a competent regulatory agency or court;
- (c) Licensee is in Default of this Agreement beyond the applicable cure period and no less severe remedy would have the effect of curing the Default. Notwithstanding the foregoing, Licensors shall not terminate this Agreement if Licensee has commenced to cure the alleged failure to perform within the applicable cure period, and thereafter such efforts are promptly prosecuted to completion with reasonable diligence. Delay in curing an alleged failure to perform will be excused if due to an Event of Force Majeure; or
- (d) Licensors discovers that Licensee has engaged in particularly egregious or severe activity demonstrating its unwillingness or inability to implement this Agreement in good faith. Examples of this would include, but not necessarily be limited to, knowingly engaging in activity that places unacceptable risks upon Salinas residents or visitors, knowingly submitting documents or other materials containing false information to the Licensors, or knowingly withholding information from Licensors when such information is pertinent to the health and physical well-being of residents and visitors of Salinas.

#### **13.5 Effect of Termination.**

(a) Upon termination of this Agreement due to its natural expiration, voluntary termination by Licensee, or termination by Licensors pursuant to Section 13.4(a) or 13.4(b) of this Agreement, Licensors's obligations under this Agreement to issue any new Site License shall immediately

terminate. Licensee shall have the right to continue to maintain and operate any Wireless Installations which have already been granted a Site License for the applicable five-year Amortization Period. All other provisions of this Agreement, including the requirement to pay License Payments and Monitoring Fees, as well as definitions and remedies for Default, shall remain in force and effect during the Amortization Period.

(b) Upon expiration of a period of five years from the Termination Date if the Agreement is terminated pursuant to Section 13.5(a), above, or immediately if the Agreement is terminated pursuant to Section 13.4(c) or 13.4(d) of this Agreement, Licensee shall immediately cease its use of all Structures and Infrastructure constructed pursuant to this Agreement. Licensee shall, at its own expense, remove all Wireless Installations from Licensor Structures within 90 calendar days unless both Parties mutually agree in writing to an alternate arrangement. Additionally, Licensee shall, at its own expense, repair any damage to the Structure or Infrastructure caused by its Wireless Installations, including the patching of holes created by screws. License Payments and Fees due to Licensor shall continue to accrue for each Wireless Installation until its removal. License Payments already made to Licensor shall be non-refundable; however, Licensee may, after the removal of any Structure and Infrastructure, request a refund of Fees paid for any services not actually performed by Licensor.

#### **14. CASUALTY.**

14.1 Casualty. In the event of damage to a Structure and/or Infrastructure due to a Casualty Event that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which Licensor elects not to repair, or if such Casualty Event is reasonably be expected to disrupt Licensee's operations on the Structure and/or Infrastructure, for more than forty-five (45) days, then Licensee may, at any time following such Casualty Event:

(a) terminate the applicable Site License or affected portion thereof upon fifteen (15) days' written notice to Licensor;

(b) place a temporary facility, if feasible, at a location equivalent to Licensee's current use of the Structure and/or Infrastructure, as the case may be, until such time as the Structure and/or Infrastructure is restored and the Wireless Installation is returned to full on-air operation in the ordinary course of Licensee's business; or

(c) submit a new SWFEP for an alternate location equivalent to Licensee's current use of the Structure and/or Infrastructure.

14.2 Termination by Licensee. If Licensee elects to terminate the Site License as a result of a Casualty Event, then Licensee shall notify Licensor of this, and Licensee shall not be responsible for any unpaid License Payments or Fees following the date of disestablishment. Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof.

#### **15. MISCELLANEOUS PROVISIONS**

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

<b>If to Licensee (including invoices):</b>	<b>If to Licensor:</b>
New Cingular Wireless PCS, LLC Attn: Tower Asset Group – Lease Administration Re: Wireless Installation on Public Structures (City of Salinas) (CA) FA No.: 10088133 575 Morosgo Drive NE Atlanta, GA 30324	Economic Development Manager Office of the City Manager City of Salinas 200 Lincoln Avenue Salinas, CA 93901

<p><b>With a copy to the AT&amp;T Legal Department:</b></p> <p>New Cingular Wireless PCS, LLC  Attn: AT&amp;T Legal Dept. - Network Operations  Re: Wireless Installation on Public Structures  (City of Salinas) (CA)  FA No: 10088133  208 S. Akard Street  Dallas, TX 75202-4206</p>	<p><b>With a copy to the Legal Department:</b></p> <p>City Attorney  City of Salinas  200 Lincoln Avenue  Salinas, CA 93901</p>
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**Contact Number for Day to Day Operation:**

**Licensors:** (831) 758-7362

**Licensee:** (800) 638-2822

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

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

15.3 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Except as otherwise provided in this Agreement, neither Party shall assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon thirty (30) days' written notice, either Party may assign this Agreement or its rights and obligations to (a) an Affiliate or (b) in connection with the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the Structures are located.

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

15.5 Applicable Law. This Agreement shall be interpreted, construed, and enforced, in accordance with the laws of the state where the Structures are located without regard to its conflict of laws principles, and, where applicable, federal law.

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

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

15.8 Waiver; Severability. No provision of this Agreement may be waived except in a writing signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision. If any portion of this Agreement is found to be unenforceable, the remaining portions shall remain in effect, and the Parties shall begin negotiations for a replacement of the invalid or unenforceable portion.

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

15.10 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensors with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those contained herein. This Agreement may not be amended or modified orally, but only by an

agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.

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

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

**CITY OF SALINAS,**  
a California Municipal Corporation

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

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

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

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

Name: Ray Corpuz \_\_\_\_\_

Name: Michael Guibord \_\_\_\_\_

Its: City manager \_\_\_\_\_

Director  
Construction & Engineering

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

Date: 8/15/2019 \_\_\_\_\_

Date: 8/21/19 \_\_\_\_\_



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

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

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

"Affiliate" means any entity that controls, is controlled by, or is under common control with a Party.

"Agreement Initial Term" means an initial term of ten (10) years.

"Amortization Period" refers to a period of five years following the termination of this Agreement, during which Licensee may continue to operate Wireless Installations for which a Site License has been granted pursuant to this Agreement.

"Annual Term" means a term of one (1) year.

"Approved Licensor Work Cost Estimate" means Licensee's written approval of a Licensor Work Cost Estimate.

"Casualty Event" means any casualty, fire, act of God, or other harm affecting a Structure and/or Infrastructure which has, in whole or in part, been granted a Site License pursuant to this Agreement.

"City Regulations" means Ordinances, Resolutions, or other rules or regulations adopted by the City of Salinas regulating the standards and/or conditions of placement of small-cell facilities within the public right-of-way.

"Commencement Date" means the first day of the month following the grant of a Site License by Licensor to Licensee in accordance with this Agreement.

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

"Dig Once' Policy" refers to City of Salinas Resolution No. 21080, as such may be amended from time-to-time.

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

"Effective Date" means the latest date in the signature blocks in the Agreement.

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

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

"Existing Law" means any Law in force at the time of the execution of this Agreement.

"FCC" means the Federal Communications Commission.

“Fee” means charges imposed by the Licensor to cover Licensor’s costs for providing specific services, including permit processing Fees, inspection Fees, and administrative costs.

“Fiscal Year” refers to a full year beginning on July 1<sup>st</sup> and ending on June 30<sup>th</sup>.

“Infrastructure” means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication services to a Wireless Installation .

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

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

“License” refers to the right, granted by Licensor to Licensee, to utilize, replace or upgrade Licensor’s Structures and Infrastructure for the purposes of installing and operating Wireless Installations and supporting Infrastructure in accordance with the terms and conditions of this Agreement.

“License Payment” means the annual payment provided by Licensee to Licensor for Licensee’s use of a Licensed Site.

“Licensed Sites” means the locations within the City of Salinas which have been granted a Site License.

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

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

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

“Licensor Work Cost Estimate” means Licensor’s written estimate of the estimated direct costs, including fully loaded labor costs to perform the Licensor Work in a SWFEP application.

“NEC” means the National Electric Code.

“NESC” means the National Electrical Safety Code.

“New Laws” means any legislative, regulatory, judicial, or other action taken subsequent to the execution of this Agreement by a government agency with jurisdiction superseding that of the Parties that affects said Parties’ rights or obligations or that establishes rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Wireless Installation on public infrastructure or in the right-of-way, that differ, in any material respect from the rates, terms or conditions of the Agreement.

“Order” refers to Federal Communications Commission’s Declaratory Ruling and Third Report and Order, FCC 18-133, released September 27, 2018, and published in the Federal Register dated October 15, 2018.

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

“Party” means individually Licensor or Licensee.

“Parties” means Licensor and Licensee collectively.

“Permitted Use” means the transmission and reception of communications signals, and the installation, construction, modification, maintenance, operation, repair, replacement and upgrade of the Wireless Installation necessary for the successful and secure use of the Licensor’s Structures and Infrastructure.

“Pre-Approved Design” means any Wireless Installation design for Licensee’s use of a Structure and/or Infrastructure which has been specifically approved in writing by Licensor to be appropriate at multiple locations within the City of Salinas.

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

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

“Relocation Notice” means a written notice delivered to Licensee at least 90 days prior to the date of Licensor’s desired relocation deadline, which Relocation Notice shall indicate the need to relocate an existing Wireless Installation.

“RF” means radio frequency.

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

“Site License” means a License granted by Licensor to Licensee pursuant to this Agreement.

“SWFEP Application” means an application by Licensee for a Permit to install a Wireless Installation.

“Structure” means any Licensor-owned poles, signs, and/or other fixtures located within the public right of way, including streetlight poles.

“Term” means the Agreement Initial Term and any renewal terms exercised pursuant to Section 1.3 of the Agreement.

“Termination Date” means the date upon which this Agreement expires or is otherwise terminated by either Party.

“Wireless Installation” shall have the same meaning as “Small Wireless Facility” in Exhibit 2 of this Agreement.

**EXHIBIT 2**  
**LICENSOR'S CURRENT DESIGN REGULATIONS**  
**RESOLUTION NO. 21580 (N.C.S.)**

**A RESOLUTION ESTABLISHING REQUIREMENTS FOR SMALL WIRELESS  
FACILITIES (SWF) IN THE PUBLIC RIGHT OF WAY (ROW)**

**WHEREAS**, the City of Salinas ("City") is a charter city organized and operating pursuant to the California Constitution and with powers and authority stemming therefrom, including Sections 5 and 7 of Article XI; and

**WHEREAS**, the City of Salinas desires to comply with all mandates regarding public utilities as imposed upon it by state and federal law; and

**WHEREAS**, on April 17, 2018, the Salinas City Council determined that there is a need for SWFs in the City of Salinas, defined the terms and conditions under which the City would support such installations, and established the requirement for a Master Lease Agreement between the City and the installer of telecommunications equipment for the use of City facilities; and

**WHEREAS**, on October 15, 2018, the Federal Communications Commission (FCC) published an Administrative Order in the Federal Register, declaring that SWFs are permitted by right on City-owned property in the ROW, subject to the requirements of the Administrative Order and "reasonable" City regulations and fees; and

**WHEREAS**, this Administrative Order argues that allowing attachment of SWFs to publicly owned assets in the right of way without a Master Lease Agreement avoids an effective prohibition of broadband deployment, and specifies that any regulations be made publicly available prior to any applications for permits; and

**WHEREAS**, in order to maintain an aesthetically pleasing community environment, protect the safety and welfare of Salinas residents, minimize degradation of the residential character of neighborhoods, and require the best available design to eliminate visual impacts while ensuring that adequate public services and facilities are constructed to accommodate the needs of Salinas residents, the city of Salinas chooses to use its police power and land use planning authority to regulate SWFs, and establishes the proposed requirements for the issuance of permits and entitlements relative to such projects in situations where the City is unable to come to an agreement on the terms of a Master Lease Agreement with a telecommunications equipment installer; and

**WHEREAS**, pursuant to the California Environmental Quality Act ("CEQA"), the proposed requirements for SWFs in the public right of way are exempt per Section 15302 and 15303 of the CEQA Guidelines, as the FCC has already deemed the installation of SWFs in the ROW to be approved, and as these regulations do not alter this, there is no potential for these regulations to cause a significant effect on the environment.

**NOW, THEREFORE BE IT RESOLVED** by the Salinas City Council that the following requirements for all SWFs in the public right of way within the City are adopted with the purpose of preserving the health, safety, and welfare of the City's residents and City property, as follows:

1. The following definitions shall be applicable to this Resolution:

- a. Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information or telecommunications services. For



purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under Title 47, Part 15 of the Code of Federal Regulations.

- b. Antenna Equipment means all equipment, including but not limited to electronics, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and is mounted or installed at the same time as such antenna.
  - c. Antenna Facility means an Antenna and associated Antenna Equipment.
  - d. Right-of-Way (or ROW) means all or any part of the entire width of a road, street or highway easement, whether or not such entire area is actually used for road, street or highway purposes.
  - e. Small Wireless Facility (or SWF) means an Antenna Facility that meets each of the following conditions:
    - i. The facility—
      - 1. Is mounted on a Structure 50 feet or less in height including any Antennas; or
      - 2. Is mounted on a Structure no more than 10 percent taller than other adjacent Structures; or
      - 3. Does not extend the existing Structure upon which the facility is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
    - ii. Each Antenna associated with the deployment, excluding associated Antenna Equipment, is no more than three cubic feet in volume;
    - iii. All other wireless equipment associated with the Structure, including the wireless equipment associated with the Antenna and any pre-existing associated equipment on the Structure, is no more than 28 cubic feet in volume;
    - iv. The facility will not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by the FCC.
  - f. Structure means a pole, tower, base station, or other building located within the ROW, whether or not it has an existing Antenna Facility.
2. A Small Wireless Facility Encroachment Permit (SWFEP) shall be required for all SWFs constructed within the ROW. SWFEPs shall be administered consistent with the provisions of Chapter 30, Article V of the Salinas Municipal Code. A SWFEP application will include all Equipment that is part of a Small Wireless Facility, including associated communication and/or electrical connection lines of a length equal to either the distance to the first splice point of these lines with a communication and/or electrical supply line or 50 (fifty) feet from the Structure upon which the Small Wireless Facility is mounted, whichever is less.
3. The City shall not issue a SWF Encroachment Permit if the Application for a SWF Encroachment Permit does not comply with the requirements of this Resolution.
4. An applicant for a SWFEP shall be deemed incomplete unless it includes all information deemed required by the Department of Public Works to review the application. The City Engineer shall prepare or cause to be prepared a detailed list of required information and shall make such list

publicly available to facilitate the timely processing of applications. This material shall include, but is not necessarily limited to, the following:

- a. An application, in a form to be provided by the City Engineer, that includes all requested information; and
  - b. A map showing the location of the proposed SWF; and
  - c. A photo showing the proposed location of the SWF; and
  - d. A photosimulation demonstrating that the SWF will comply with the design standards described herein; and
  - e. Documentation identifying the owner of the Structure and demonstrating that the SWF conforms to the design and co-location restrictions of the Structure owner(s).
  - f. Construction details, including a soils report and a structural analysis signed by qualified Professional Engineer(s), demonstrating that the Structure will be structurally sound, as defined in these regulations, and will not have a significant risk of structural failure after installation of the SWF; and
  - g. Details regarding the connection of electrical and communications transmission lines to the site; and
  - h. Details relating to any closures of roads or sidewalks that will be necessary due to the proposed construction; and
  - i. A study demonstrating that the SWF will not emit radiofrequency emissions that will, either individually or cumulatively with other already installed telecommunications facilities, expose any member of the public to radiofrequency emissions in excess of those permitted under FCC regulations; and
  - j. Proof of insurance pursuant to City specifications as may be amended from time to time to defend, indemnify, and hold harmless the City for its facility, and name the City and its officers and employees as additional insured by endorsement; and
  - k. Any applicable permit review fees as adopted by City Council.
5. The City Engineer or his/her designee shall review the application to confirm compliance with City Ordinances and regulations. Installation of SWFs shall conform to the following minimum design standards:
  - a. SWFs shall be designed, installed and located so as to minimize adverse visual impacts and shall not contain advertising material of any kind.
  - b. SWFs shall be constructed of, painted, or otherwise treated with anti-graffiti materials, including, but not limited to, graffiti resistant paints or finishes. Graffiti on SWFs, including Structures and Equipment, shall be removed within forty-eight hours of being reported. All Structures shall have a decal or permanent sticker (maximum 6 square inches) with the SWF operator's graffiti abatement contact information affixed.
  - c. SWFs may not include any type of lighted signal, lights, or other illumination, except as required by federal or state law.
  - d. Soils and structural analysis shall be prepared and stamped by a qualified Professional Engineer. The analysis shall include plans and specifications that shall include, at a minimum, the size, weight, mounting method, method of providing electrical power (including placement of any cables), estimated monthly electrical use, radiofrequency radiation, method of attaching to the Structure if required for electrical power, and

compliance with manufacturer's specification for such Structure. Licensee shall not overload the structural member of any Structure so as to cause any undue or serious stress or strain to the Structure, or any part thereof, and shall demonstrate compliance with specifications issued by the manufacturer of such Structure, if applicable. The City shall have the right, at any time, to make a determination whether the Structure, or any part thereof, is being overloaded so as to cause undue or serious stress or strain on the Structure or any part thereof. The decision of the City shall be final and binding on Licensee. If in the opinion of the City the stress or strain may endanger or injure the Structure, or any part thereof, Licensee agrees, at its sole cost, to immediately relieve the stress or strain by lightening the load, provide structural reinforcement in a manner satisfactory to City or install a replacement Structure. If any of Licensee's Network Equipment and facilities fails to meet applicable legal or City requirements, Licensee shall promptly, at its own cost, replace such equipment and facilities with compliant equipment and facilities.

- e. Before issuance of a permit, proposals for SWFs attached to a structure in the ROW must demonstrate that the proposed SWF will comply with all of the following:
  - i. All work shall be done in a manner consistent with the City's "Dig Once" policy (Resolution 21080, as such may be amended from time-to-time).
  - ii. All fiber and electrical infrastructure shall be installed underground, except where connection may be made to preexisting, immediately adjacent overhead electrical, telephone, or other wire/fiber service via a service drop. Applicants may not add new overhead electrical or fiber lines except when immediately adjacent to existing lines.
  - iii. Except for Antennas and any Equipment necessary to screen said Antennas, all Equipment must be screened. Whenever feasible, Equipment shall be installed in an underground vault. Underground vault vents must be flush to the ground. If an underground installation is infeasible, Equipment shall be attached to the Structure and screened from view. Screening shall be accomplished in a manner consistent with the design of the Structure – in the case of decorative or architecturally enhanced street lights or other Structures, the screening shall incorporate design elements of the existing Structure. Above-ground cabinets not mounted on a Structure are prohibited.
  - iv. The SWF Antenna(s) shall be screened with a solid, opaque covering that has been colored to blend with the structure upon which the facility is mounted and other streetscape or surrounding features to the extent feasible. The covering shall be no larger than is reasonably necessary to fully enclose the antennas and shall not exceed twice the width of the existing structure or increase the height of the Structure by more than 20%. When mounted on architecturally enhanced Structures (such as decorative streetlights), the SWF and its coverings shall be designed so that, in the opinion of the City Engineer or his/her designee, the aesthetic quality of the Structure has been preserved. For reasons of public safety, including routine and emergency maintenance, installation on any part of a Structure supporting signs or devices used to control or direct vehicle, pedestrian, or other traffic is prohibited.
  - v. If an applicant proposes to replace an existing Structure in order to accommodate a SWF, the new Structure shall match the height, width, appearance, and neighborhood characteristics of the original Structure. Any previous function of

the previous structure (such as a street light) shall be incorporated into the replacement structure in accordance with current City standards.

vi. New Structures may not be constructed or utilized unless it is demonstrated conclusively by the Applicant that no existing structure can accommodate the SWF, that replacement of the existing structure is infeasible, and that these regulations would otherwise “effectively prohibit” the provision of wireless service if the new Structure is not permitted. The height and width of the structure without the Antenna or covering shall be equal to the height and width of the nearest City street light mounted on a City-owned Structure. The new Structure shall also incorporate design elements of the existing nearby Structure in the design of the new Structure. SWFs on new Structures shall meet the same design guidelines as those installed on existing structures.

vii. Wires and cables must enter Structures from below ground and must run inside the Structure. All electrical connections to the facilities shall be metered separately from City’s electrical service and shall have a separate shut-off device located at the Structure which allows for power to be shut off to the SWF without impacting any other operations of the Structure upon which the SWF is mounted. City staff shall be provided access to this shut-off device so that power may be quickly shut off in an emergency situation.

viii. The installation shall not interfere with the public’s use and enjoyment of the public right-of-way or the continued good functioning of existing subterranean infrastructure. Applications shall demonstrate that, at a minimum:

1. Applicant’s proposal will allow parking and appurtenant door opening adjacent to the Structure.
2. Applicant’s proposal will comply with all American Association of State Highway and Transportation Officials (AASHTO) sight distance requirements for the health, safety, and welfare of pedestrians and drivers.
3. Applicant’s proposal will not block or interfere with the use, maintenance and/or repair of fire hydrants, street lights and other existing facilities.
4. Applicant’s proposal will not restrict sidewalk access or parking when access panels and doors are open.
5. Applicant’s proposal will comply with all state, federal and local regulations regarding Americans with Disability Act (ADA) accessibility, providing a minimum of four feet width for sidewalk pedestrians with a cross slope not to exceed 2%.

6. If an application is found to be incomplete or not in compliance with these regulations, City shall notify the applicant and provide a written list of the reasons for the finding(s) of incompleteness and/or noncompliance. The applicant may correct any identified deficiencies and resubmit the application for further review, upon which the City will again review the materials and either approve the application or provide notice as described above. If the City has previously twice notified an applicant that the application materials submitted for a particular application are incomplete or otherwise not in compliance with these regulations, then if that application is resubmitted and is then found to be incomplete or not in compliance with these regulations a third time, the City shall deny that application. A denied application does not prevent an applicant from submitting a significantly similar application in the future.



7. The City may issue to an Applicant a SWFEP for a SWF once it has been demonstrated to the satisfaction of the Department of Public Works that the requirements specified herein have been met. Following this approval, the Applicant shall do the following:
  - a. The Applicant shall provide contact information to the City for the construction and the ongoing operation of the site.
  - b. The Applicant shall pay to the City of Salinas any Inspection and/or Monitoring Fees due.
  - c. The Applicant shall perform the work at the site in a manner that enables City staff to inspect the work being performed. The City Engineer shall specify in writing the inspections that need to be performed and shall cause these inspections to be performed. The Applicant or their representative shall notify the City when their work is ready for inspection. The City Engineer or his/her designee may require additional funds to be paid if the work is of such quality as to necessitate a number of inspections that the City Engineer deems to be excessive.
  - d. Upon completion of the SWF, the Applicant shall provide to the City a radiofrequency study to verify that the proposed facility is operating in accordance with the standards set by federal law at the time of the study. If the study concludes that the radiofrequency emissions exceed federal standards for such emissions, the facility shall be shut down immediately and shall not resume operation until it is demonstrated to the satisfaction of the City Engineer or his/her designee that the facility will operate in accordance with federal law.
  - e. In the event that these steps are not completed within six months of the issuance of the SWFEP, the City Engineer or his/her designee may revoke the SWFEP.
8. The City may include in a SWF Encroachment Permit such conditions, in addition to those already set forth in state and federal law, as may be required to govern the construction, installation, or maintenance of SWFs in the Public Rights-of-Way, and to protect and benefit the public health, safety, and welfare. Such conditions may also govern the installation and use of equipment that is not located on a Structure, but that is deemed necessary for the use and maintenance of a permitted SWF.
9. If the Applicant believes that the application of any particular provision of these regulations to a particular application would have the impact of "effectively prohibiting" the provision of wireless service, the Applicant may appeal the denial of any application to the Director of Public Works within ten days of such denial. This appeal shall include, in addition to the information included in the application, a narrative identifying the provision which allegedly has this impact, provides an analysis demonstrating why application of the provision would "effectively prohibit" the installation, and provides an analysis demonstrating that no reasonable alternative exists for the provision of wireless telecommunications service. The Director of Public Works may approve the application if he/she finds that the application of the provision to this particular location would "effectively prohibit" the provision of wireless services. The Director of Public Works may request, and Applicant shall provide, any information deemed reasonably necessary by the Director to make an informed decision. Appeals shall be limited to determining whether the application of a particular provision of these regulations would "effectively prohibit" the provision of wireless service if enforced, and for no other claim or reason. The Director may deny the application if

he/she finds that the Applicant has not successfully proven that the application of these regulations would "effectively prohibit" the provision of wireless services. The City may charge a fee to cover its actual costs in administering an appeal under this Section.

10. Applicant shall ensure the installation of SWF meet conditions as may be required to control the construction, installation, maintenance, repair and removal of such facilities in a public right of way so as to protect and benefit the public health, safety, and welfare. The terms and conditions of any such permit issued shall be subject to these requirements and limited to those areas consistent with the City's authority under applicable law. These conditions shall include, but not be limited to, the following:
  - a. Normal and routine access to, and use, operation, maintenance and repair of SWF that does not impact vehicle or pedestrian traffic patterns shall be considered as part of the permitted installation, and no new permit shall be required for any such access, use, operation, maintenance or repair.
  - b. A new permit shall be required for upgrades, relocations, and/or modifications of the installed facilities, unless the City Engineer or his/her designee determines that such upgrade, relocation, and/or modification is minor, insignificant, and insubstantial. Permittee may replace approved Equipment with like-kind, similar Equipment, without obtaining a new permit if such like-kind, similar Equipment serves a substantially equivalent function, is the same or smaller in size, has the same or fewer number of antennas than approved by the City, and presents a substantially similar appearance to the Equipment it replaces. All modifications and replacements remain subject to these requirements and non-discretionary structural and safety codes.
  - c. Each year, at an interval to be specified by the City, the Applicant or their successor shall provide documentation demonstrating that insurance has been maintained on all SWF (including Structures) in accordance with City specifications, as may be amended from time-to-time. Requirements for insurance coverage shall be determined by the City Attorney's Office, who shall make such requirements publicly available.
11. A permit for the installation of a SWF may be transferred to a successor, assign, or affiliate of the permittee, provided that any transferee holds and provides evidence of all required FCC and any other required governmental approvals or licenses necessary to provide telecommunication services.
12. This Resolution shall apply only to SWFs within the ROW and shall not extend to any other types of facilities and/or any other locations. This Resolution shall not amend or supersede Resolution 21369 (as may be amended from time to time).
13. If the City and an applicant have entered into a Master Lease Agreement (or an equivalent Agreement) pursuant to Resolution 21369, the City and the Applicant may agree within that Agreement to alternative regulations which, in the opinion of the City Council, would be equal or superior to the regulations contained herein with regards to accomplishing the stated goals of these regulations. When considering these alternatives, the Council shall consider the revised regulations as a whole, and individual modifications shall not be applicable to other Applicants unless a holistic review of alternatives is performed through a Master Lease Agreement.

14. The City reserves the right to require a Master Lease Agreement as a condition of installing or maintaining SWFs. In the event that the FCC's Administrative Order is amended, modified, and/or invalidated in a manner that the City is no longer required under the Order to issue a SWF Encroachment Permit, the City may deny any applications received pursuant to this Resolution until both parties enter into a Master Lease Agreement. Further, the City reserves the right to revoke any SWF Encroachment Permit in accordance with Section 30-42 of the Salinas Municipal Code.

**PASSED AND APPROVED** this 2nd day of April 2019 by the following vote:

**AYES:** Councilmembers: Barrera, Cromeenes, Davis, De La Rosa, McShane, Villegas and Mayor Gunter

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

**APPROVED:**

DocuSigned by:

*Joe Gunter*

D3A49BD817A34AA

Joe Gunter, Mayor

**ATTEST:**

DocuSigned by:

*Elizabeth Soto*

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Patricia M. Barajas, City Clerk

**EXHIBIT 3**  
**CURRENT LICENSOR FEES**  
**RESOLUTION NO. 21581 (N.C.S.)**

**A RESOLUTION OF THE SALINAS CITY COUNCIL ESTABLISHING FEES  
RELATED TO SMALL WIRELESS FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, the Salinas is a charter city organized pursuant to California Constitution Art. XI, sec. 7 with legislative power subject only to limitations of general law; and

**WHEREAS**, pursuant to the authority granted Salinas through Art. XI, sec. 7, the City has the power to impose valid regulatory fees; and

**WHEREAS**, the Salinas City Council has adopted regulations to govern the permitting, inspection, and monitoring of Small Wireless Facilities within the City Right-of-Way, which include the establishment of a Small Wireless Facility Encroachment Permit; and

**WHEREAS**, the City Council desires to ensure that all costs incurred in association with the permitting, inspection, and monitoring of these facilities, whether through staff time or otherwise, are fully recovered to maintain established City service standards; and

**WHEREAS**, the fees proposed in this Resolution do not exceed the estimated reasonable cost of providing the service for which the fee is charged; and

**WHEREAS**, the adoption of these fees is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378).

**NOW THEREFORE**, be it resolved by the Council of Salinas as follows:

The fees for application, amendment, and/or renewal for a Small Wireless Facility Encroachment Permit shall be as follows:

Small Wireless Facility Encroachment Permit Application:	\$347.00
Small Wireless Facility Encroachment Permit Appeal:	\$357.00
Small Wireless Facility Encroachment Permit Inspection Fee:	\$742.00
Small Wireless Facility Annual Monitoring Fee:	\$270.00

City staff is hereby authorized to promulgate regulations necessary for the implementation of these fees.



**PASSED AND APPROVED** this 2nd day of April 2019, by the following vote:

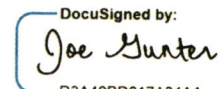
**AYES:** Councilmembers: Barrera, Cromeenes, Davis, De La Rosa, McShane, Villegas and Mayor Gunter

**NOES:** None

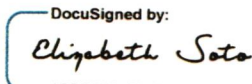
**ABSENT:** None

**ABSTAIN:** None

**APPROVED:**

DocuSigned by:  
  
D3A49BD817A34AA  
Joe Gunter, Mayor

**ATTEST:**

DocuSigned by:  
  
1CDD63317567488

Patricia M. Barajas, City Clerk

**EXHIBIT 4**  
**REQUIRED PERMIT INFORMATION (SUBJECT TO MODIFICATION BY LICENSOR)**

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

**WIRELESS INSTALLATION - ATTACHMENT TO EXISTING STRUCTURE**

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

**EXHIBIT 5**  
**FORM OF SITE LICENSE**

This Site License, is granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the City of Salinas (the "Licensor") to NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Licensee").

WHEREAS, Licensor and Licensee entered into a License Agreement for Wireless Installations On Public Structures dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement"); and

WHEREAS, pursuant to that Agreement, Site License Granted. Licensee has submitted a Small Wireless Facilities Encroachment Permit ("SWFEP") application in accordance with the terms of that Agreement, has obtained approvals for that SWFEP, and has completed construction of the Wireless Installation.; and

WHEREAS, Licensor has reviewed the application in accordance with applicable laws and regulations, and has verified through inspections that the work completed by the Licensee has been done in accordance with all applicable requirements.

NOW, THEREFORE, as stipulated in Section 4.4 of the Agreement, the City of Salinas, as Licensor, hereby grants this Site License, including all associated rights, to Licensee, subject to the following provisions:

1. Ongoing Operations. Ongoing operation of the site shall be in accordance with the terms and conditions of the Agreement.
2. Project Description and Locations. This Site License is provided for the Wireless Installation identified and described in Exhibit 1 attached hereto.
3. Term. The term of this Site License shall be as set forth in Section 1.4 of the Agreement, unless terminated sooner pursuant to said Agreement.
4. License Payment and Monitoring Fees. Licensee shall remit any License Payments and Monitoring Fees required by the Agreement. The License Payment shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Sections 3.1 through 3.4 of the Agreement.
5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

I hereby confirm that the above language is true and correct and certify on behalf of the City of Salinas that this License has been granted to Licensee.

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

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

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

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

## **EXHIBITS**

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



## EXHIBIT 1 TO SITE LICENSE

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

Licensee Wireless Installation Reference: [LICENSEE TO COMPLETE]

FA / USID:

Site Name: CRAN\_POLYGON NAME\_NODE #

PTN / PACE:

Structure Identification Number: [LICENSOR TO COMPLETE]

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

Wireless Installation Equipment List: [LICENSEE TO COMPLETE]

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