

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) X *Waiver of First Requested*
____ Recommendations of Boards, Commissions & Committees (Green)
____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: May 8, 2019 (B of T) Date: May 16, 2019
TITLE: A Resolution Authorizing a Master License Agreement with New Cingular Wireless (AT&T) for Small Wireless Facilities Located Within the Municipal Rights of Way

BACKGROUND/POLICY IMPLICATIONS:

Attached for your consideration is a resolution authorizing a master license agreement with New Cingular Wireless that would regulate the attachment of wireless communication equipment within Village owned rights of ways. The implementation of small cell wireless facilities will address existing and future demands for additional service and broadband capacity by local consumers. The proposed agreement complies with Public Act 100-0585 and Village Ordinance 7539 regulating deployment of small cell wireless facilities.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X SRN _____ Date 5/8/19

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.

MEMORANDUM

TO: Scott Niehaus, Village Manager
FROM: Nicole Aranas, Assistant Village Manager *NA*
DATE: May 8, 2019
SUBJECT: RESOLUTION AUTHORIZING A MASTER LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS FOR SMALL WIRELESS FACILITIES LOCATED WITHIN THE MUNICIPAL RIGHTS OF WAY

Attached please find information pertaining to a proposed master license agreement with New Cingular Wireless PCS (AT&T) to allow for attachment of small cellular wireless communication equipment within Village of Lombard rights of way.

This master license agreement is the second request received upon Village adoption of Ordinance 7539 An Ordinance Amending the Municipal Code of the Village of Lombard Relative to the Permitting Regulations and Deployment of Small Wireless Facilities. Recall that Village adoption of Ordinance 7539 was necessitated by Illinois Public Act 100-0585 (effective August 1, 2018) which regulated and limited municipal authority relating to small cell wireless facilities. The Village previously approved a similar master license agreement subsequent to the act with Verizon Wireless.

AT&T has approached the Village and is seeking to use small cell antenna technology to address network gaps and improve broadband capacity. Small cell antenna technology is generally a more targeted and less intrusive means of expanding mobile networks and filling coverage gaps as compared to towers or certain antenna installations. The AT&T Master License agreement would permit AT&T to locate small wireless facilities in the Village rights of way through individual permits issued by the Public Works Department under terms which comport with the requirements of Ordinance 7539 and Illinois Public Act 100-0585. Individual permits for proposed installation will remain subject to an application review process by Village staff to include full review of detailed engineering plans.

Implementation of small wireless facilities throughout the Village is anticipated to improve coverage in the areas where additional local coverage is most needed. As the use of small cell antenna technology increases to address growing demands for broadband capacity by local consumers, it is anticipated that additional requests for Master License Agreements regulating the implementation of this technology will continue. Please let me know of any issues, questions or concerns you may have regarding this matter.

RESOLUTION NO. _____

A RESOLUTION APPROVING A MASTER LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR THE COLOCATION OF SMALL WIRELESS FACILITIES LOCATED WITHIN THE MUNICIPAL RIGHTS OF WAY AND AUTHORIZING THE VILLAGE MANAGER TO SIGN SAID LICENSE AGREEMENT ON BEHALF OF THE VILLAGE, AND TO EXECUTE ANY AND ALL DOCUMENTS, ON BEHALF OF THE VILLAGE, IN FURTHERANCE OF SAID LICENSE AGREEMENT AND THE TERMS THEREOF

BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, that the President and Board of Trustees hereby approve the LICENSE AGREEMENT attached hereto as Exhibit 1 and made part hereof (the "Agreement").

BE IT FURTHER RESOLVED that the Village Manager is hereby authorized and directed to execute the Agreement attached hereto as Exhibit 1, on behalf of the Village, as well as execute any and all additional documents necessary to carry out the terms and provisions of said Agreement.

ADOPTED this ___ day of May, 2019, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this ___th day of May, 2019.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit 1

**MASTER LICENSE AGREEMENT WITH
NEW CINGULAR WIRELESS PCS, LLC**

(attached)

MASTER LICENSE AGREEMENT FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES LOCATED WITHIN THE MUNICIPAL RIGHTS OF WAY

This MASTER LICENSE AGREEMENT ("Agreement") is made and entered into by and between the Village of Lombard, an Illinois municipal corporation ("Licensor"), and NEW CINGULAR WIRELESS PCS, LLC a Delaware limited liability company ("Licensee"). Licensor and Licensee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WHEREAS, the Licensor intends to promote the expansion of communications services in a manner consistent with, for example, the Small Wireless Facilities Deployment Act, the Illinois Cable and Video Competition Act, the Illinois Telephone Company Act, the Telecommunications Act of 1996, the Middle Class Tax Relief and Job Creation Act of 2012, the Simplified Municipal Telecommunications Tax Act, and Federal Communication Commission Regulations; and

WHEREAS, Public Act 100-585, known as the Small Wireless Facilities Deployment Act, approved by the Governor on April 12, 2018, with an effective date of June 1, 2018, acts to impose certain additional requirements on municipalities, including the Licensor, regarding the permitting, construction, deployment, regulation, operation, maintenance, repair and removal of certain defined Small Wireless Facilities both within public rights-of-way and in other locations within the jurisdiction of the Licensor; and

WHEREAS, the Small Wireless Facilities Deployment Act and Article VII (Small Wireless Facilities) of Title IX (General Regulations), Chapter 97 (Streets and Sidewalks) of the Village Code of the Village of Lombard (the "Small Wireless Code") provide that Small Wireless Facilities attached to a utility pole or wireless support structure owned by the Licensor within the public rights-of-way are subject to an attachment agreement; and

WHEREAS, the Corporate Authorities of the Licensor have determined that the establishment of an attachment agreement for Small Wireless Facilities mounted on utility poles or wireless support structures owned by Licensor in public right-of-ways, will properly facilitate and manage the deployment of Small Wireless Facilities within the Licensor's jurisdiction; and

WHEREAS, regulation of the deployment of said Small Wireless Facilities can be accomplished through the use of site-specific permitting, managed and controlled by staff, but only after a Licensee agrees to the terms of this Agreement; and

WHEREAS, the Licensee desires to install, maintain, and operate Small Wireless Facilities in and/or upon certain of Licensor's utility poles or wireless support structures.

NOW THEREFORE, based upon the consideration recited herein and the granting of Site-Specific Permits, the Licensee and the Licensor agree to abide by the terms and conditions of this Agreement as follows:

1.0 Recitals. The recitals set forth above are incorporated herein and made part of this Agreement as representing the intent of the Parties, and as substantive covenants and conditions.

2.0 Definitions.

2.1 The capitalized terms used herein, unless specifically defined within Section 2.2 of this Agreement, are the terms defined in the Small Wireless Facilities Deployment Act ("Act") and the Small Wireless Code, as amended.

2.2 The following definitions are specific to this Agreement and are not found in the Act.

"Act" shall mean the Small Wireless Facilities Deployment Act.

"Agreement" or "License Agreement" shall mean this Agreement.

"Annual License Fee" means the annual rate described in Section 6.3 of this Agreement.

"CFR" means the Code of Federal Regulations.

"Entity" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, unit of local government, a receiver, trustee, guardian or other representative appointed by order of court, or any other legally recognized organization, whether for-profit or not-for-profit. The Licensor shall not be considered a "Person" or "Entity" for purposes of this Agreement.

"Effective Date" means the date this Agreement is executed by the last Party to sign following approval by the Licensor's Village Board.

"Law(s)" means any applicable statute, administrative or judicial act, decision, charter, code, constitution, law, opinion of a court of competent jurisdiction, court order, ordinance, policy, regulation, including procedures and the conditions of certificates as prescribed by regulation, rule, schedule, specification, rates and tariffs as established in statute, rules, or regulation, or other requirement of the Licensor or any other unit of government or agency of a unit of government having joint or separate jurisdiction over the Licensee, now or hereafter in effect, during the term of this Agreement.

"Licensor Representative" means the then-current person at the Licensor that oversees administration of this Agreement, or his/her designee.

"Permit Drawing and Specifications" means documents submitted by a Licensee, in conformance with the requirements of the Licensor, for a Site-Specific

Permit Application which depict the design, construction, installation, and maintenance of any Small Wireless Facility.

“Site-Specific Location” means a location which qualifies, under this Agreement, for the placement of, or which contains, Small Wireless Facilities allowed under a Site-Specific Permit.

“Site-Specific Permit or Permit” means a non-exclusive permit granted by the Licensor allowing the installation of Small Wireless Facilities at a Site-Specific Location.

“Site-Specific Permit Application” means the application for a permit for the installation of Small Wireless Facilities at a Site-Specific Location.

“Small Wireless Facility” means a Small Wireless Facility as that term is defined in the Act, or any other wireless facility as agreed to pursuant to a Site-Specific Permit Application and an approved Site-Specific Permit.

“Unauthorized Communication Site” means a Small Wireless Facility on a utility pole or a wireless support structure within the corporate limits of the Licensor that is either i. constructed or installed in a manner that does not conform to the application for a permit approved by Licensor and that is not made to conform following notice by Licensor and an opportunity to cure; or ii. constructed or installed without a permit or as otherwise specifically authorized by the Corporate Authorities of the Licensor. Construction or installation of a Small Wireless Facility or Utility Pole at a site under the exclusive permitting jurisdiction of another unit of local government, such as the County or State, from whom the Licensee has obtained a valid permit for such construction or installation, shall not be an Unauthorized Communication Site.

“Unauthorized Installation Charge” means the penalty payable by Licensee to Licensor under this Agreement for an Unauthorized Communication Site.

“Work” means all design, construction, restoration, maintenance, removal, repair, relocation, or modification of any Small Wireless Facility, utility pole, or wireless support structure installed by Licensee.

3.0. Term.

3.1. Initial and Extension Terms. This Agreement shall apply to all Small Wireless Facilities proposed, permitted and installed at Site-Specific Locations on Utility Poles or Wireless Support Structures owned by the Licensor pursuant to the Small Wireless Code, as applicable, or as otherwise agreed to pursuant to a Site-Specific Permit Application or an approved Site-Specific Permit. The initial term of this Agreement shall be five (5) years (“initial term”) commencing on the Effective Date, unless earlier terminated in accordance with this Agreement. Notwithstanding anything to the contrary

in this Agreement, the extension term of this Agreement shall be for one (1) additional five (5) year term ("initial extension term") commencing on the expiration of the initial term, provided that:

- 3.1.1. The Licensee has not provided the Licensor with a written notice of its intent to terminate the Agreement at the end of the initial term without renewal; and
- 3.1.2. The Licensee is in compliance with the provisions of this Agreement and applicable Laws; and
- 3.1.3. There has not been any change in the Law that materially affects the provisions of this Agreement or its enforceability; and
- 3.1.4. The Licensor or Licensee has not otherwise terminated this Agreement in accordance with its provisions.
- 3.1.5. The Act has not been repealed or been found to be unconstitutional by a court of law; and
- 3.1.6. The Act did not sunset on June 1, 2021.

Up to two (2) additional five (5) year extension terms (the "additional extension terms") may be entered into by written mutual agreement of the Parties following the initial extension term, subject to 3.1.1 through 3.1.6. above, except that the notice from Licensee as specified in 3.1.1. will propose an additional extension term, and any such additional extension term shall be subject to the applicable Village code provisions or regulations in effect at the time of renewal. The Parties acknowledge that in the event this Agreement is not renewed by mutual agreement of the Parties for a first or second additional extension term, the Parties shall enter into a new agreement applicable to site-specific permits applied for after the termination date, subject to the applicable Village Code provisions or regulations in effect at that time.

3.2 New Agreement/Holdover. A Licensee may enter into a new License Agreement with the Licensor no later than six (6) months before the expiration of the initial term (if the Agreement is not renewed), extension term or additional extension term based upon the License Agreement then in effect or in accordance with such other contract rates, terms and conditions, or ordinances that may be adopted by the Licensor from time to time. If upon expiration of the initial term (if the Agreement is not renewed), extension term or additional extension term the Parties fail to negotiate the renewal of a new License Agreement, and the Licensee fails to comply with Section 3.3, the Licensee shall be deemed to holdover and shall otherwise be liable to perform its obligations of the terms and conditions of the License Agreement as well as payment of the holdover amount set forth in Section 7.1 of this Agreement. No holdover shall exceed six (6) months.

3.3 **Non-Renewal.** If a new License Agreement has not been executed by the Parties by the expiration of the initial term (if the Agreement is not renewed), extension term or additional extension term, and the Parties do not otherwise agree in writing to renew, then the Licensee, at its option, shall either:

3.3.1 Remove the Licensee's Small Wireless Facilities at its sole cost and expense within sixty (60) days of the expiration date of the applicable Site-Specific Permit. If the Licensee fails to remove the Small Wireless Facilities by said date, the Licensor may in its discretion remove said facility pursuant to Section 10.8 herein; or

3.3.2 Without cost or charge to the Licensor, abandon the Licensee's Small Wireless Facilities in place, but only if the Licensor first approves the proposed abandonment, in writing; including conditions applicable to the abandonment. In the case of an approved abandonment in place, the Licensor may at its discretion remove said Small Wireless Facility pursuant to Section 8.5 herein; or

3.3.3 Sell the Licensee's Small Wireless Facility to a qualified third-party subject to the Licensor's prior written approval; which will not be unreasonably withheld.

3.3.4 Upon the occurrence of any circumstance set forth in this Section 3.3, this Agreement shall be deemed terminated except as to the indemnification and hold harmless provisions which shall survive until all statutes of limitations and repose applicable to a casualty occurring during the license term have expired. If a Small Wireless Facility has time remaining on its Site-Specific Permit term, then the provisions of this Agreement remain in place during the remaining time on those Site-Specific Permits but there shall be no right to an extension unless a new License Agreement is negotiated.

3.4 **Termination.** Except as otherwise provided herein, the Licensor or Licensee may terminate this Agreement or the applicable Site-Specific Permit(s) for cause, as defined in Section 3.4.1, upon thirty (30) days written notice sent by the terminating party to the other party. In the event of a termination for cause, the terminating party may exercise its legal rights and/or equitable remedies either under this Agreement or by any other means that may be provided by law or equity, including the right, in the case of the Licensor, without limitation, to recover any uncollected fees that would be due and payable by the Licensee to the Licensor if this Agreement had not been terminated during the initial term, extension term or additional extension term, as well as reasonable costs, including attorney's fees, incurred in the termination process, and to retain any security amounts, if any, deposited with the Licensor.

3.4.1 **A termination for cause means** 1) The Licensee or Licensor fails to cure a material default of this Agreement within thirty (30) days after it receives the terminating

party's written notice of default, or, if the default can be cured and such cure reasonably requires more than thirty (30) days to achieve, fails to commence and thereafter diligently continue such cure to completion within a reasonable period of time. A failure to cure relative to a specific permitted site will result in a termination of the applicable Site-Specific Permit only; or 2) Any agency exercising jurisdiction over the Licensee has by final order that is no longer subject to appeal, terminated or otherwise revoked the Licensee's approval, authorization, certification or license to provide the Wireless Services or Small Wireless Facilities. A termination or revocation that affects specific sites only will result in the termination of the applicable Site-Specific Permit(s) only, while a general termination or revocation affecting Licensee's ability to provide Wireless Services or Small Wireless Facilities in general will result in a termination of the entire Agreement; or 3) The Licensee installs or causes to be installed an Unauthorized Communication Site, as defined in Section 2.2. Installation of an Unauthorized Communication Site may result in the termination of applicable Site-Specific Permit(s) or, in the case of three (3) or more installations of Unauthorized Communication Sites during any five (5) year term, termination of the entire Agreement. However, cooperation with other agencies/jurisdictions to comply with their laws and procedures (as set forth in Section 4.1.3 "Compliance with Laws" and Section 8.1 "Provision of Wireless Services") shall not be an event of default or basis for termination, provided no installation is done before Licensors authorization.

3.4.2 Removal upon Termination for Cause. Upon establishment of termination for cause and after the expiration of the time period set out in Section 3.4.1 above, the right of the Licensee to operate all or a specific Small Wireless Facility(ies), as applicable, will immediately terminate. If the Licensee has failed within ninety (90) days from the effective date of termination for cause to remove or cause removal of the Licensee's Small Wireless Facilities, the Licensors may at its discretion remove said Facility pursuant to Section 7 herein.

3.5 Changes in the Law. The Parties acknowledge that Communications Services, and Wireless Services and the law associated with communications services and wireless services is evolving at the Federal, State and local level. If during the initial term, extension term or additional extension terms the Laws are adopted, amended or repealed in a manner that is binding on the Licensors and that requires the Licensors to alter existing Agreements, the Parties shall negotiate an amendment to this Agreement to the extent necessary to comply with any new Law affecting existing agreements.

4.0. Grant and Scope of License.

4.1 Grant of License. Subject to all the terms and conditions of this Agreement, the Licensors grants to the Licensee and, the Licensee accepts from the Licensors, a non-exclusive license to submit Site-Specific Permit Applications to install, and, upon installation pursuant to a valid Site-Specific Permit, to use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace Licensee's Small Wireless Facilities pursuant to said permit. All rights and obligations of the Licensee under this Agreement

shall be exercised by the Licensee at its sole cost and expense unless otherwise agreed to in writing by the Parties or as otherwise required by the Laws.

4.1.1. **Site-Specific Permit.** The Licensee, as condition precedent to its right to install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace any of the Licensee's Small Wireless Facilities, shall prior to occupying any area, submit a Site-Specific Permit Application to the Licensor, and receive from the Licensor a Site-Specific Permit to occupy the Site-Specific Location with the Small Wireless Facilities pursuant to the Small Wireless Code, as applicable.

4.1.2. **Reserved.**

4.1.3. **Compliance with Laws.** The installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of any Small Wireless Facilities shall comply with all Laws, including specifically, to the extent applicable, the Small Wireless Code and, to the extent applicable and to the extent such provisions are not preempted by state or federal law, Article III (Standards For Construction on Rights-of-Way and Openings and Excavations) of Title IX (General Regulations), Chapter 97 (Streets and Sidewalks) of the Village Code of the Village of Lombard (the "Construction on Rights-of-Way Code").

4.1.4. **License Only.** Nothing in this Agreement or in a Site-Specific Permit shall be deemed to grant, convey, create, or vest in the Licensee a property right or perpetual interest in the Utility Poles, Wireless Support Structures, land or the rights-of-way of the Licensor including, without limitation, any fee interest, leasehold interest, easement, or franchise right. Any interpretation of this license or a Site-Specific Permit by a Court, which would purport to create any fee, leasehold, easement, or franchise interest in the Licensee shall, twenty-four (24) hours after such determination, result in the Licensee's forfeiture of any and all rights under this Agreement or any Site-Specific Permit.

4.1.5 **No Warranty.** Neither the Licensor, nor any existing easement holder, franchisee, or other Licensee shall be liable to the Licensee for failure of the Licensor or the others to secure legal authority from a grantor of an easement affecting the installation of Small Wireless Facilities. It shall be the obligation of the Licensee to ascertain any legal right held by any servient estate of an easement affecting the proposed or existing Small Wireless Facilities and to resolve those issues with the owner of the servient estate.

4.2. **Immunities.** Nothing in this Agreement shall be interpreted to override, compromise or waive any of the Licensor's statutory or common-law privileges or immunities which are all specifically reserved. There are no third-party beneficiaries of this Agreement.

4.3. **Authorized Use.** The Licensee shall use Licensee's Small Wireless Facilities for the sole purpose of providing Communications Services and Wireless Services and may only install, use, operate, maintain, repair, remove, reattach, reinstall,

relocate, and replace Licensee's Small Wireless Facilities as authorized by the Site-Specific Permit.

4.4. **Control of Facilities.** Licensee's Wireless Service Providers may own the equipment installed in the Small Wireless Facilities, but in no event shall Licensee allow any other Entity to control the Licensee's Small Wireless Facilities or any portion thereof for any purpose not directly related to the Licensee's provision of Communications Services or Wireless Services. Licensee shall have no authority to assign, sell or transfer a Site-Specific Permit without the written consent of the Licensor, unless such assignment, sale or transfer is made to an affiliate of the Licensee. The Licensee is at all times liable and responsible for the obligations of this Agreement. Additionally, the Licensee shall require its Wireless Service Providers to acknowledge this Agreement and that any and all Wireless Service Providers shall be responsible for meeting the terms of this Agreement in the event the Licensee fails to do so.

4.5. **Condition of Premises.** As a material part of the consideration for this Agreement, Licensee takes and accepts the Licensor's Utility Poles, Wireless Support Structures and Rights-of-Way "as is" in the condition in which the Licensee finds them, with any and all latent and patent defects and with no express or implied warranties by the Licensor of merchantability, fitness, suitability, or fitness for any particular purpose. If the Licensee finds that a desired location is unsuitable for equipment, Licensee has the right to replace the pole with one consistent with the municipality's adopted codes and design standards, and that is suitable for the equipment. Pole will continue as the property of Licensor. The Licensee shall have the right to inspect the Utility Poles, Wireless Support Structures, and Rights-of-Way prior to installing the Small Wireless Facilities. The Licensor will be responsible for the regular maintenance of the Utility Poles, Wireless Support Structures and Rights-of-Way and will keep the Utility Poles, Wireless Support Structures and Rights-of-Way in good repair as required by all Laws. The Licensee shall be responsible for repairing any damage to the Rights-of-Way, Wireless Support Structures, or Utility Poles that is disturbed or damaged as a result of the installation, construction, reconstruction, use, operation, maintenance, repair, removal, reattaching, reinstallation, relocation or replacement of the Small Wireless Facilities. The Licensor shall have the right to temporarily remove or require the Licensee to temporarily remove the Small Wireless Facilities in order to maintain the Utility Poles, Wireless Support Structures and Rights-of-Way, at the Licensee's sole cost and expense, as long as Licensor provides proper prior notice to Licensee.

4.6 **Interruption of Service.** The Licensor shall not be liable to the Licensee, its customers, or anyone else for the interruption of service of the Licensee or any interference with the operation of the Licensee's Small Wireless Facilities. In the event of interruption of service caused by Licensor, Licensor shall notify Licensee of interruption as soon as practicable.

4.7 **Electrical.** Licensee shall be permitted to connect Small Wireless Facilities to necessary electrical, fiber optic and telephone service, at Licensee's sole cost and expense. Licensee shall attempt to coordinate with applicable utility companies to

provide separate service to Licensee's Small Wireless Facilities for Licensee's use. In the event that Licensee can obtain separate electrical service with a separate meter measuring usage, the Licensee shall pay the utility directly for its power consumption, if billed directly by the utility. In the event that separate electrical service is not possible or practical under the circumstances, Licensee may use existing service, at Licensee's sole cost and expense, upon the reasonable approval of Licensor. In the event that Licensee uses existing utility service at an individual Utility Pole or Wireless Support Structure, the Parties agree to either: i) attempt to have a submeter installed, at Licensee's expense, which shall monitor Licensee's utility usage (with a reading and subsequent bill for usage delivered to Licensee by either the applicable utility company or Licensor); or ii) provide for an additional fee in the applicable Site-Specific Permit which shall cover Licensee's utility usage. The Parties agree to reflect power usage and measurement issues in each applicable Site-Specific Permit.

Licensee shall be permitted at any time during the Term of each Site-Specific Permit, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Utility Pole), a temporary power source, and all related equipment and appurtenances within the Utility Pole, or elsewhere on the Utility Pole in such locations as reasonably approved by Licensor. Licensee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Utility Pole. In the event such conduits affect the life expectancy of the Utility Pole, an additional fee that reflects the replacement cost of the Utility Pole may be assessed by Licensor after providing written notice to Licensee.

4.8 General Restrictions.

4.8.1. Removal, Relocation or Replacement of Utility Pole. In the event Licensor, in its reasonable discretion deems it necessary to remove, relocate or replace a Utility Pole, Licensor shall notify Licensee at least one hundred eighty (180) days prior of the need to remove or relocate its Small Wireless Facility. In such event, Licensor shall provide options for alternative locations for Licensee relocation of equipment which shall be in a mutually agreeable location ("Alternative Premises"). Licensee shall be solely responsible for all costs related to the relocation of its Small Wireless Facility to the Alternative Premises. In the event that a suitable Alternative Premises cannot be identified, Licensee may terminate the applicable Site-Specific Permit. In the event of an emergency, which for purposes of this Agreement shall be considered any imminent threat to health, safety and welfare of the public, Licensor must provide as much notice of the removal, relocation or replacement of a Utility Pole as reasonably practical under the circumstances.

4.8.2. Damage to Utility Pole. In circumstances where the Utility Pole is damaged, (struck by a vehicle or by lightning or otherwise knocked down), the Licensor shall have the right to remove the Utility Pole and transport the Small Wireless Facilities to the Licensor's facilities. The Licensor shall notify the Licensee of the damaged Utility Pole as soon as reasonably practical. The Licensor shall have discretion to replace the

Utility Pole, as set forth in Section 4.8.1. The Licensee shall be solely responsible for all costs related to the removal and/or reinstallation of its Small Wireless Facilities. If the utility pole needs to be replaced, and the utility pole to be replaced is or was a non-standard design or type in order to accommodate the Licensee's small wireless facility, and recovery from the liable party who damaged the pole is not available, the Licensee shall be solely responsible for the incremental costs of the replacement utility pole over the cost of a standard pole.

4.8.3. **Right-of-Way Only.** This Agreement shall only apply to Site-Specific Permits for Small Wireless Facilities located on Licensor Utility Poles and Wireless Support Structures that are located entirely within the Right-of-Way.

5.0. Other Rights and Obligations of Licensee.

5.1. **Rights and Obligations after Installation of Small Wireless Facilities.** Except as set forth in this Section, should Licensee wish to modify the form, fit, or function of any Small Wireless Facility during the term of this Agreement, Licensee may request, in writing, the Licensor's approval and authorization to add, attach, install, move, repair, replace, or otherwise alter or change the Licensee's Small Wireless Facilities in a manner consistent with this Agreement and with the Act and the Small Wireless Code. All written requests for this purpose shall be filed with the Licensor's Representative, who may revise the Site-Specific Permit for such Work subject to appropriate reasonable conditions, or require a new permit. All Work on the Utility Poles shall comply, to the extent applicable, with the Licensor's Small Wireless Code.

5.1.1. **Routine Maintenance.** The Licensee shall not be required to obtain approval or a permit to perform routine maintenance. However, the Licensee shall notify the Licensor, in writing, of any routine maintenance at least forty-eight (48) hours in advance of the maintenance.

5.1.2. **Replacement of Small Wireless Facilities.** If the Licensee is seeking to replace a Small Wireless Facility with a Small Wireless Facility that is substantially similar and the same size, or smaller, than the existing Small Wireless Facility, the Licensee does not need to receive written authority or any additional permits from the Licensor. At least ten (10) days prior to the planned replacement, the Licensee shall notify the Licensor of the planned replacement and provide the Licensor with (i) the equipment specifications for the replacement of equipment, which shall include the equipment type and model numbers for the antennas and all other wireless equipment associated with the replacement Small Wireless Facility; and (ii) information sufficient to establish that the replacement Small Wireless Facility is substantially similar. The Licensee shall provide all information necessary and requested by the Licensor to establish that the replacement Small Wireless Facility is substantially similar. The Licensor has the sole right and responsibility to determine if a proposed Small Wireless Facility is substantially similar to an existing Small Wireless Facility.

5.1.3. **Micro Wireless Facilities.** The installation, placement, maintenance, operation, or replacement of Micro Wireless Facilities, as defined in the Act, that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes do not require an application or authorization from the Licensor. However, the Licensee shall still notify the Licensor, in writing, of any work on Micro Wireless Facilities under this subsection at least forty-eight (48) hours in advance of that work.

5.1.4 **Traffic Plan.** If any of the work performed in this Section involves activities that affect traffic patterns or require lane closures, the Licensor may require the Licensee to obtain a right-of-way permit.

5.2. **Due Care.** Licensee shall at all times use due care to insure that no damage, beyond reasonable wear and tear, is caused to Utility Poles, Wireless Support Structures, Rights-of-Way, or Licensor Facilities, conduits, or any other portion of the Licensor's or others' property, including but not limited to: ground surfaces, landscaping, paved surfaces, swales, sewer drainage features, fibers, wires, cables, poles and/or conduits lawfully located on or about Utility Poles, or other physical structures on which the Licensee intends to attach and/or install Licensee's Small Wireless Facilities. Any damage which is caused by the Licensee shall be reported to the Licensor's emergency contact listed in Section 13.19 herein and in writing to the affected Party within forty-eight (48) hours of Licensee learning of the damage. Licensee shall reimburse the affected Party upon demand for any damage caused by its employees, contractors, subcontractors, agents or representatives. The Licensee shall be fully liable for the acts or omissions of its subcontractors, agents and employees. Licensee shall install, use, operate, maintain, repair, remove, reattach, reinstall, relocate, and replace its Small Wireless Facilities in safe condition and good repair and in compliance with the requirements and conditions of this Agreement, the Act, and the Small Wireless Code. Licensee shall ensure that its employees, agents or contractors that perform work in connection with its Small Wireless Facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

5.3. **Identification of Facilities.** Licensee shall identify its Small Wireless Facilities, including, without limitation, its fibers, wires, and cables and equipment enclosures with appropriate durable visible identification tags that describe the Licensee's name, number, color, identification, code, size, and manufacture of Licensee's Small Wireless Facilities. Licensee shall consult with the Licensor Representative to make certain that such identification tags are specific to the Licensee so as not to be confused with other Entities lawfully within the area of Licensee's Small Wireless Facilities. Licensee shall comply with J.U.L.I.E protocol and shall have sole responsibility to locate Licensee's Small Wireless Facilities. Upon a change in ownership or control of Small Wireless Facilities, the new Entity shall provide updated identification tags within fourteen (14) days.

5.4. **Interference.** Licensee agrees that its license is subject at all times to the Licensor's right to use its Utility Poles and Wireless Support Structures for their primary

purpose. Licensee agrees to install Small Wireless Facilities of the type and frequency which will not cause harmful interference to any equipment of the Licensor, governmental agencies, or other licensees of the Utility Poles or Wireless Support Structures which existed on prior to the date this Agreement is executed by the Parties. Additionally, the Licensee's operation of Small Wireless Facilities shall not interfere with the frequencies used by a public safety agency for public safety communications, both present and future frequencies. Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency. In the event any after-installed Licensee's Small Wireless Facilities cause such interference, and after Licensor has notified Licensee in writing of such interference, Licensee, at its sole expense, will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, powering down such Small Wireless Facilities and later powering up such Small Wireless Facilities for intermittent testing. Licensor agrees that Licensor and/or any other licensees of the Utility Pole or Wireless Support Structure who in the future take possession of the Pole or Structure will be permitted to install only such Small Wireless Facilities that are of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Small Wireless Facilities of Licensee. The Licensor may terminate a permit for a Small Wireless Facility based on such interference if the Licensee is not making a good faith effort to remedy the problem. With respect to interference with public safety frequencies, good faith effort must be action in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

6.0. **Costs**

6.1. **Make Ready Work:**

6.1.1. For Licensor's Utility Poles that support aerial facilities used to provide communications services or electric service, the Licensee shall comply with the process for make-ready work under 47 U.S.C. 224 and its implementing regulations. The Licensee shall be responsible for all costs associated with make-ready work. The good faith estimate of the municipality for any make-ready work necessary to enable the Utility Pole to support the requested collocation shall include municipality pole replacement, if necessary.

6.1.2. For Licensor's Utility Poles that do not support aerial facilities used to provide communications services or electric service, the Licensor shall prove a good-faith estimate for any make-ready work necessary to enable the Utility Pole to support the requested collocation, including pole replacement, if necessary, and shall provide the

good faith estimate within ninety (90) days after receipt of a complete application. The Licensee shall be responsible for all costs associated with make-ready work.

6.1.3. Fees for make-ready work, including any Licensor Utility Pole replacement, shall not exceed actual costs or the amount charged to Communications Providers for similar work. Make-ready work can include fees and expenses incurred for review by consultants, unless the Licensor's Utility Pole does not support aerial facilities used to provide communications services or electric service.

6.1.4 Make-ready work may include work needed to accommodate additional public safety communications needs that are associated with the deployment of public safety equipment for attachment within one (1) year of the application.

6.3. **Annual License Fee.** The Licensees shall pay, on an annual basis, an Annual License Fee to Licensor for each Site-Specific Location in the amount of the higher of TWO HUNDRED AND NO/100 DOLLARS (\$200.00) or such other amount as authorized by law and set forth in the Licensor's Small Wireless Code ("Annual License Fee").

6.4 **Timing of Annual License Fee Payments.** Upon the final inspection of an initial Site-Specific Permit site, and receipt of a notice that the Permit site is approved by Licensor the Licensee shall pay the full Annual License Fee for that Site-Specific Location within sixty (60) days of the permit issuance. Annual License Fees, for each Site-Specific Location, shall thereafter be due and payable by the Licensee on January 1 each year.

6.5 **Late Payment Interest.** Any Annual License Fees not paid within sixty (60) days of due date will be assessed a rate of 10% per annum from the due date.

6.6. **Failure to Pay.** Licensee's failure to pay any costs or Annual License Fees under this Agreement within thirty (30) days of the due date shall constitute a material default, if Licensee fails to cure as provided in Section 3.4.1. Licensee's obligation to pay all previously incurred costs, fees, and right-of-way fees shall survive the expiration or earlier termination of this Agreement. If a failure to pay has not been cured within thirty (30) days of the default, the applicable Site-Specific Permit shall terminate and Licensee shall remove Licensee's Small Wireless Facilities within the timeframe specified in Section 7. Licensee's failure to remove within the time required will authorize the Licensor at its discretion to remove said facility pursuant to Section 7 herein.

7.0 **Abandonment and Removal of Small Wireless Facilities**

7.1. **Licensee's Obligation to Remove.** The Licensee has an obligation to remove its Small Wireless Facilities, and restore the Utility Pole, Wireless Support Structures, and Rights-of-Ways to their original condition, reasonable wear and tear and casualty damage excepted. This obligation arises: (1) upon termination of this Agreement; (2) upon the termination of any Site-Specific Permit; (3) when the Licensee is no longer using a Small Wireless Facility to provide Wireless Services; or (4) when the Licensee

abandons the Small Wireless Facilities. Licensor agrees and acknowledges that all of the equipment and Small Wireless Facilities of the Licensee shall remain the personal property of Licensee and Licensee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes Licensee to remain on the Property after termination of the Site-Specific Permit, Licensee shall pay a holdover fee in the amount of \$250 per month until such time as the removal of the Small Wireless Facilities is completed. The Licensor shall have the authority at any time to order and require Licensee to remove and abate any Small Wireless Facilities that are in violation of the Small Wireless Code or, to the extent applicable and to the extent not preempted by state or federal law, the Construction on Rights-of-Way Code.

7.2. Licensor's Authority to Remove Small Wireless Facilities. In the event that the Licensee fails to remove a Small Wireless Facility within ninety (90) days from the termination of this Agreement or a Site-Specific Permit, or from the date of written notice from the Licensor demanding the removal, the Licensor shall have the right to take such action as it deems necessary to remove the Small Wireless Facility, including the authority to engage the services of an independent contractor or through any code provisions regarding the abatement of nuisances. All notices of removal or abandonment shall be sent by certified or registered mail, return receipt requested, by the Licensor to the Licensee at the last known address of the Licensee. In the event that Licensor removes a Small Wireless Facility pursuant to this Agreement, the Licensee shall pay the Licensor, upon demand, the Licensor's actual and reasonable cost of removal of the Small Wireless Facility and for any other losses or damages incurred by the Licensor by such undertaking. This obligation shall survive termination or expiration of this Agreement. Alternatively, pursuant to the requirements of the Small Wireless Code, the Licensor may use any bond or letter of credit deposited by the Licensee to cover the cost of any removal. If the Licensor removes the Licensee's Small Wireless Facility in accordance with this Agreement, the Licensor shall have no obligation to protect, store, recycle, or otherwise conserve the removed Small Wireless Facility. The Licensor shall have no obligation to pay or reimburse the Licensee for any Small Wireless Facility removed by the Licensor. Any monies secured by the Licensor as a result of repurposing all or part of the Small Wireless Facility may be applied by the Licensor to its general fund.

7.3. Abandoned Communications Equipment. If the Licensor suspects that the Licensee is no longer using the Small Wireless Facilities to provide Wireless Service, it may require the Licensee to provide evidence that the Small Wireless Facilities are still operational and that they are being used to provide Wireless Service. If the Licensor suspects that a Small Wireless Facility has been abandoned, it may send the Licensee written notice that: (1) it suspects that a Small Wireless Facility has been abandoned; and (2) requires the Licensee to remove the Small Wireless Facility or provide proof that the Small Wireless Facility is operational within thirty (30) days; and (3) informs the Licensee that failure to provide proof or to remove the Small Wireless Facility will result in the Licensor removing the Small Wireless Facility and that the cost of removal is the

Licensee's responsibility, as set forth in Section 7.2. A Small Wireless Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned.

8.0. Installation and Replacement of Small Wireless Facilities.

8.1. Provision of Communication Service. This Agreement shall include new types of Small Wireless Facilities that may evolve or be adopted using wireless technologies. Licensee shall, at its expense, comply with all Laws in connection with the use of the Rights-of-Ways or other property. For Site-Specific Locations in the Right of Way, said locations may be used by Licensee, seven (7) days a week, twenty-four (24) hours a day, only for the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities approved by a Site-Specific Permit by the Licensor from time to time for Communication Services or Wireless Services and not for any other purpose whatsoever.

8.2. Ongoing Inspections. The Licensor shall have the ongoing right to inspect any Site-Specific Location or Work related to the Licensee's Small Wireless Facilities as it deems appropriate.

8.3. Unauthorized Installation Charge. If the Licensee installs an Unauthorized Communication Site, the Licensee acknowledges it will be fined in the amount of seven hundred and fifty dollars (\$750.00) per day for each day the violation exists. Notwithstanding any other provision of this Agreement, if Licensee has failed to remove an Unauthorized Communication Site within thirty (30) days of delivery of a notice of such Unauthorized Communication Site from the Licensor, the Licensor may immediately remove or cause the removal of the facility(ies) named in such notice for which the violation persists. Payment of the penalty shall not authorize the presence of the Unauthorized Communication Site at the specific location without a Site-Specific Permit. No action or inaction by the Licensor with respect to unauthorized use of any Right-of-Way or other Licensor property shall be deemed to be a ratification of an unauthorized use or waiver of any provision of this Agreement.

8.4. Removal. Licensee may in its discretion remove its Small Wireless Facilities at its own cost and expense provided that it has given the Licensor Representative notice of the removal and has been issued any necessary permits to do so.

8.5. Failure to Restore or Remove. If the Licensee fails to remove Small Wireless Facilities in accordance with this Agreement, or fails to restore the Right-of-Way as set forth in this Agreement, the Licensor may, at the Licensee's sole cost and expense, remove Small Wireless Facilities or cause their removal without liability on the part of the Licensor, and the Licensee shall pay the Licensor, upon demand, the Licensor's actual and reasonable cost of removal and for any other losses or damages incurred by the Licensor by such undertaking. This removal is subject to the terms and timelines set forth

within this Agreement. This obligation shall survive termination or expiration of this Agreement.

9.0 Indemnity, Waiver, Risk of Loss.

9.1. **Licensee Indemnification.** The Licensee agrees to defend, indemnify and hold the Licensor and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, liability, losses and expenses, including reasonable attorney's fees and costs of suit or defense from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Licensor's Utility Poles or Rights-of-Way associated with such improvements by the Licensee or its employees, agents, contractors, subcontractors, arising out of the rights and privileges granted under the Act or this Agreement; provided, however that the Licensee has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Licensor or its employees or agents.

9.2. **Waiver.** The waiver by a Party of any breach or default or violation of any provision, by any other party, shall not be deemed to be a waiver or continuing waiver by that Party of any subsequent breach or default or violation of the same or any other provision.

9.3. **Risk of Loss.** The Licensee shall assume all responsibility for promptly reimbursing the Licensor, or its franchisees, for any of their losses or expenses associated with damages caused directly or indirectly by the Licensee, its employees, agents and/or contractors or subcontractors in the Rights-of-Way, including without limitation to any poles or conduits, sewers, gas, water, electric lines, fiber or cable communication lines, caused by the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of the Licensee's Small Wireless Facilities. The Licensee shall provide immediate notification to the affected Party or Entity upon the occurrence of any such damage.

9.4. **Limitation.** Notwithstanding the foregoing, neither Party shall have any liability to the other under this Agreement or otherwise for special, punitive or consequential damages, including without limitation, damages for lost profits or business interruption.

10.0 Insurance Requirements and Securities.

10.1. The Licensee's financial integrity is of interest to the Licensor; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at the Licensee's sole expense, insurance coverage, which will satisfactorily insure the Licensee and, where appropriate, the Licensor against claims and liabilities which may arise out of the installation, use, operation, maintenance, repair, removal, reattachment, reinstallation, relocation, and replacement of Small Wireless Facilities. Such insurance shall be issued by companies

licensed to do business in the State of Illinois, with an A.M. Best's rating of no less than A-VII, or subject to the approval by the Licensor, not to be unreasonably withheld or delayed, unless the Licensee is self-insured. Such insurance shall be in the types and for an amount not less than those listed in Section 97.417 of the Small Wireless Code.

10.1.1. The liability insurance policy required by this section shall be written on form ISO CGL 00 01 or equivalent and maintained by the Licensee throughout the terms of the Agreement, and such other period of time during which the Licensee is operating without a license hereunder, or is engaged in the removal of its Small Wireless Facilities. Licensee will provide at least thirty (30) days written notice to Licensor of cancellation or non-renewal of any required coverage that is not replaced.

10.1.2. In no event later than thirty (30) days prior to such cancellation, the Licensee shall obtain and furnish to the Licensor replacement insurance certificates meeting the requirements of this section and of Section 97.417 of the Small Wireless Code.

11.0. Emergency Contacts.

11.1. **Licensee's Duty to Maintain Current Emergency Contacts.** Licensee will maintain the emergency contact information current at all times with the Licensor Representative.

12.0. Representations and Warranties.

12.1. **Representations and Warranties of the Parties.** As of the Effective Date, each Party represents and warrants to the other Party that:

- 12.1.1. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation;
- 12.1.2. The execution, delivery, and performance of this Agreement and its exhibits are within its powers, have been duly authorized by all legally necessary actions, and do not violate any of its governing documents, any contracts with any joint owners to which it is a party, or any Law;
- 12.1.3. This Agreement and its exhibits and any other document executed and/or delivered in accordance with this Agreement constitute a legally valid and binding obligation, enforceable against it in accordance with its covenants, terms, conditions, and provisions;
- 12.1.4. It has not filed and it is not now contemplating the filing for bankruptcy protection and, to its knowledge, no action is threatened against it which would result in it being or becoming bankrupt;

12.1.5. There is not, to its knowledge, pending or threatened against it or any of its affiliates, any legal or administrative proceedings that could materially and adversely affect its ability to perform its obligations under this Agreement; and

12.1.6. No "event of default" or potential "event of default" with respect to it has occurred or is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

12.2 Representations and Warranties of the Licensee. The Licensee represents and warrants to the Licenser that:

12.2.1. The Licensee has all approvals, authorizations, certifications, licenses, and franchises required by the State of Illinois, the FCC and/or any other agency to provide the Communications Service and Wireless Service; and

12.2.2. The Licensee is not aware of any facts or circumstances that would call into doubt the continuing validity of any such approvals, authorizations, certifications, licenses, or franchises; and

12.2.3. There is not pending or, to the Licensee's knowledge, threatened against the Licensee or its parent corporation or any of its subsidiaries or affiliates, any legal or administrative proceedings that could materially and adversely affect the validity of such licenses, authorizations, or franchises; and

12.2.4. All Work to be performed by the Licensee pursuant to this Agreement will be (i) performed in a good and workmanlike manner, consistent with any Permit specifications, manufacturer's specifications, prevailing industry standards, applicable Laws, and the provisions of this Agreement, and (ii) that it will be free from defects.

13.0. Miscellaneous Provisions.

13.1. **No Bar to Other Relief.** Nothing contained in this Agreement will prevent or otherwise restrict either Party from pursuing its rights at law or in equity, including injunctive relief and specific performance, in the event of a default and a material breach by the other Party.

13.2. **Immediate Relief.** Except for challenges to the validity of this Agreement or portions hereof which are specifically waived and released, nothing in this Agreement shall be deemed or construed to prohibit a Party from obtaining judicial, regulatory, or other relief necessary in order to preserve the status quo or prevent the loss or violation of that Party's rights.

13.3. **Amendments.** This Agreement may not be amended except pursuant to a written instrument signed by the Parties.

13.4. **Assignment.** This Agreement is personal to only the Licensee and no other Entity. The Licensee may not directly or indirectly assign, transfer, or convey to another Entity this Agreement, or any of the rights and obligations of the Licensee established by this Agreement without written approval of the Licensor. Any assignment or transfer of this Agreement shall be void, and the Licensor may terminate this Agreement if the Licensee attempts to assign or transfer this Agreement without compliance hereof.

13.4.1. The preceding sentences of this Section notwithstanding, the Licensee may assign or transfer this Agreement to its parent corporation or any subsidiary corporation or affiliate or successor in interest, provided that such parent corporation, subsidiary corporation, affiliate, or successor in interest first agrees, in writing, to be fully bound by this Agreement and the exhibits and to jointly assume all of the Licensee's obligations and liabilities hereunder, whether arising before or after the date of such assignment or transfer. The Licensor Representative shall be notified of assignment or transfer.

13.4.2. The preceding sentences of this Section notwithstanding, if Licensee sells or otherwise transfers all or substantially all of its assets, then, upon the provision of written approval from the Licensor, which will not be unreasonably withheld, Licensee may assign or otherwise transfer this Agreement and the rights and obligations hereunder without the approval of the Licensor so long as the transferee is not statutorily unfit to hold such a license. For the avoidance of doubt, if Licensee owns the underlying land at any site specific location, the mere sale or other transfer of the land shall not affect this License.

13.5. **Sublicensing.** The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Small Wireless Facilities deployed by Licensee in the rights-of-way pursuant to this Agreement may be owned and/or operated by Licensee's third-party Wireless Service Providers and installed and maintained by Licensee pursuant to license agreements between Licensee and such Wireless Service Providers. Such Small Wireless Facilities shall be treated as Licensee's facilities for all purposes under this Agreement provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such facilities, (ii) the Licensor's sole point of contact regarding such facilities shall be Licensee, and (iii) Licensee shall remain responsible and liable for the removal and relocation of such facilities per the Agreement. However, all Wireless Service Providers shall agree, in writing, to be fully bound by this Agreement and to jointly assume all of the Licensee's obligations and liabilities hereunder. Licensee shall not grant such Wireless Service Providers rights of access to such facilities. The Licensor acknowledges that Licensee may include third party-owned equipment in its initial installation of Small Wireless

Facilities and that such inclusion shall not be considered a sublicense to a third party subject to the provisions of this section.

13.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.7. **Exhibits.** As of the Effective Date, all exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to and duly executed amendments to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part hereof as if fully set forth herein.

13.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws rules or principles.

13.9. **Headings.** The headings hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation hereof.

13.10. **Independent Contractor.** Each Party to this Agreement acts as an independent contractor and not as an employee of the other Party. Nothing in this Agreement shall be construed to establish a partnership, joint venture, group, pool, syndicate, or agency relationship between the Licensor and the Licensee.

13.11. **Resolving Conflicting Provisions.** To the extent the provisions and any other authorizations and approvals required to be obtained by the Licensee from the Licensor are in conflict, the provisions of the Agreement, authorizations and approvals which impose(s) the higher or greater legal duty or obligation upon the Licensee shall take precedence.

13.12. **Rules of Construction.** Each Party and its counsel have reviewed this Agreement. Accordingly, the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the construction and interpretation hereof.

13.13. **Severability.** If a court of competent jurisdiction finds or rules that a provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

13.14. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assignees of the Parties and approved successors.

13.15. **Time of Action.** For the purposes hereof, the time in which an act is to be performed shall be computed by excluding the first day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any day observed as an official holiday by the Licensor, the time for performance shall be extended to the following Business Day.

13.16. **Jurisdiction and Venue.** Exclusive jurisdiction and venue for any and all disputes related in any manner to this Agreement, regardless of their basis or nature, shall be in the Circuit Court of DuPage County.

13.17. **No Recording.** Licensee shall not record this Agreement or any other document referred to herein without the written consent of the Licensor.

13.18. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, warranties, agreements, or understandings (whether oral or written) between the Parties relating to the subject matter hereof which are not fully expressed herein.

13.19. **Notices.** All notices which shall or may be given pursuant to this Agreement shall be given, in writing, and shall be deemed validly given if delivered or sent by certified mail, return receipt requested, or by commercial courier, provided the commercial courier's regular business is delivery service, and addressed, as follows:

Licensor: The Village of Lombard
Attn: Carl Goldsmith
Director of Public Works
1051 Hammerschmidt Avenue
Lombard, IL 60148

Copy to: Klein, Thorpe and Jenkins, Ltd.
Attn: Thomas P. Bayer
20 N. Wacker Drive, Suite 1660
Chicago, IL 60606

24/7 EMERGENCY CONTACT: Phone Number: 1-800-852-2671

Any notice to be sent to the Village President shall be sent to the same address referred to above.

Licensee: New Cingular Wireless Pcs, LLC
Attn: Network Real Estate Administration
1025 Lenox Park Blvd NE 3rd Floor
Atlanta, GA 30319
Re: Wireless Installation on Public Structures (Lombard, IL)

Fixed Asset # _____

Copy to: New Cingular Wireless Pcs, LLC
Attn: Legal Department, Network Operations
208 S. Akard Street
Dallas, TX 75202-4206
Re: Wireless Installation on Public Structures (Lombard, IL)
Fixed Asset # _____

24/7 EMERGENCY CONTACT: Phone Number: 1-800-638-2822

13.20. **No Waiver.** A waiver by the Licensor of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of the Licensor to require exact, full, and complete compliance with the terms contained herein be construed as changing the terms of this Agreement or as stopping the Licensor from enforcing full compliance with the provisions herein. No delay, failure, or omission of the Licensor to exercise any right, power, privilege, or option arising from any breach shall impair any right, power, privilege, or option, or be construed as a waiver or acquiescence of such breach or as a relinquishment of any right. No right, power, privilege, or option of the Licensor shall be construed as being exhausted by the exercise thereof in one or more of the instances. The rights, powers, privileges, and options given to the Licensor under this Agreement and by law shall be cumulative.

13.21 **Casualty.** In the event of damage by fire or other casualty to a Utility Pole or Wireless Support Structure on which Small Wireless Facilities are located that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Utility Pole or Wireless Support Structure Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Licensee's operations at the Premises for more than forty-five (45) days, then Licensee may, at any time following such fire or other casualty, provided Licensor has not completed the restoration required to permit Licensee to resume its operation at the Premises, terminate the Site-Specific Permit upon fifteen (15) days prior written notice to Licensor. Any such notice of termination shall cause the Site-Specific Permit to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Site-Specific Permit and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Site-Specific Permit. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Licensee's use of the Premises is impaired.

13.22 **Applicable Laws.** During the term of this Agreement, Licensor shall use and maintain the Utility Poles, Wireless Support Structures, and Rights-of-Way in compliance with all Laws. Licensee shall, in respect to the condition of the Small Wireless Facilities and at Licensee's sole cost and expense, comply with (a) all Laws relating solely

to Licensee's specific and unique nature of use of the Small Wireless Facilities; and (b) all building codes requiring modifications to the Small Wireless Facilities due to the improvements being made by Licensee to the Small Wireless Facilities.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below with their respective signatures, to be effective as of the date of the signature of the last Party to sign.

LICENSOR:

**Village of Lombard, an Illinois
municipal corporation**

By: _____

Its: _____

Date: _____

WITNESS

LICENSEE:

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

By: AT&T Mobility Corporation, its
Manager

By: Blaine C. Thomas

Its: Director-Construction & Engineering

Date: _____

WITNESS
