

## **SMALL WIRELESS FACILITIES MASTER LICENSE AGREEMENT**

This license agreement for the installation of small wireless facilities on governmental poles ("Agreement") is made and entered into as of the latest date upon which all parties have signed ("Effective Date") by and between the City of West Allis, a Wisconsin municipal corporation ("City") and wireless provider New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Licensee").

In consideration of the covenants of this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. **Grant of License.** Subject to the terms of this Agreement, City grants Licensee a nonexclusive license to occupy and use space upon the City's governmental poles and other wireless support structures. In compliance with any laws requiring a privilege to obstruct the right-of-way, Licensee may access, use and occupy the City's right-of-way for the installation, construction, use, maintenance, operation, repair, modification, replacement and upgrade of equipment, technologies, frequencies and related fiber and materials reasonably necessary to access, connect, operate and provide power to its small wireless facilities located on the City's governmental poles. The City expressly reserves for itself the rights and uses of the right-of-way for public purposes and for the public's health, safety and general welfare and reserves the right to restrict Licensee from locating equipment or facilities in specific locations to maintain access to and use of the right-of-way.
2. **Term.** The term of this Agreement shall commence on the Effective Date of this agreement and terminate on December 31, 2034 (the "Term"), unless terminated earlier pursuant to this Agreement. This Agreement shall automatically renew itself for successive 6 month terms in the event that neither party provides at least 60 days' notice prior to the expiration of the Agreement.

**Licensing Process.** Prior to installing any new or additional small wireless facility onto any governmental pole or wireless support structure, Licensee shall apply for a collocation permit and pay any fee required by resolution or ordinance. Such fee shall, in no event, exceed the maximum amount allowed by applicable law. Licensee will identify in the application any make-ready work it believes needs to be performed in connection with Licensee's use of the governmental pole and the parties shall comply with any law regarding how make-ready work is performed. Upon the City issuing a permit authorizing Licensee to collocate a small wireless facility on one of the City's governmental poles, the continued use of that small wireless facility shall be subject to the provisions of this Agreement. City will process applications for permits in accordance with all applicable laws.

3. **Rates and Payment.**
  - a. **Annual Rental Rate.** Licensee shall pay to the City an annual rate for each small wireless facility collocated on the City's governmental poles or wireless support structures and use thereof in the amount of \$250 per year.

- b. **ROW Administration Fee.** Licensee shall pay to City \$20 per small wireless facility installed on a pole or wireless support structure for administration of the ROW.
- c. **Partial-Year Rate.** For purposes of determining the total annual rate applicable to a newly installed small wireless facility for a partial calendar year, the total rate for that first calendar year will be a pro-rated amount equal to the product obtained by multiplying 1/12th of the annual rate by the number of months remaining in such year on the date the City issues the collocation permit for that particular small wireless facility. Licensee shall remit payment in full to the City at the time the City issues the collocation permit.
- d. **Full-Year Rate.** After January 1 of each year, the City shall send an invoice to Licensee equal to the annual rate for that year multiplied by the number of small wireless facilities collocated on the City's governmental poles on that date. Licensee shall remit payment in full to the City within 30 days after the date of the invoice.
- e. **Adjustment of Rate.** If the federal communications commission adjusts its levels for rates that are presumptively lawful under 47 USC §§ 253 or 332(c)(7) or if the state of Wisconsin adjusts its levels for rates that are presumptively lawful under Wis. Stat. § 66.0414, the City may adjust any impacted rate in the table above on a pro rata basis, consistent with the federal communications commission's or state's action.
- f. **Reasonableness of Rate.** Licensee acknowledges that the annual rates above, and any adjustments to the levels for rates by the federal communication commission or the state, are reasonably related to the actual, direct, and reasonable costs incurred by the City for Licensee's use of, and space on the governmental pole for collocation of its small wireless facilities and any related activities.
- g. **Five-Year Rate Increase.** City may increase the rates described in this Agreement by 10 percent as of December 31, 2024 and every fifth anniversary thereafter, rounded to the nearest multiple of \$5.

#### 4. Licensee Obligations.

- a. **Installation, Maintenance, and Repair.** At its own expense, Licensee shall erect, install, repair and maintain its small wireless facilities in safe condition and good repair in accordance with any current or future rules or orders of the federal communications commission, the State public utility commission, or any other federal, state or local authority having jurisdiction. Licensee shall repair all damage that is directly caused by the activities of Licensee in a right-of-way involving its small wireless facilities or structures, and to return the right-of-way to its former condition before it was so damaged.
- b. **Modifications.** In connection with Licensee's request to modify or adjust its facilities, Licensee shall coordinate with City any activity to rearrange or adjust any of its facilities and such activity shall be at Licensee's sole expense; provided, however, that Licensee shall not be responsible for any third-party or City costs necessary to correct third party attachments that are non-compliant with Laws. Notwithstanding anything to the contrary, subsequent to the original small wireless facility approved by City, Licensee may, without submitting a new collocation permit application, modify or replace all or a portion of the small wireless facility with equipment substantially similar to, or the same size or smaller than the original equipment.

- c. **Utilities.** Licensee shall be solely responsible for arrangement and payment for electric service necessary in connection with its small wireless facilities.

5. **City Obligations.**

- a. **Make-Ready Work.** The City shall comply with any state laws that require the City to make improvements to a governmental pole to support a requested collocation, including pole replacement if necessary. The City may charge to Licensee any costs or fees for make-ready work that are not inconsistent with any fees allowed by state law.
- b. **Licensee Choice to Pay for or Perform Work.** With regard to a governmental pole that does not support aerial cables used for video, communications, or electric service, City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including pole replacement if necessary, not later than 60 days beginning after receipt of a complete application, except that Licensee may access to the governmental pole that is necessary for the Licensee to make that estimate. Subject to availability of materials, make-ready work, including any pole replacement, must be completed within 60 days after the Licensee's written acceptance of a good faith estimate provided by the City or within 365 days after the permit is issued if Licensee makes the estimate.

6. **Obligations of all Parties.**

- a. **Compliance with Laws.** Nothing in this Agreement shall be construed to relieve the parties from compliance with any applicable federal, state, or local laws.
- b. **Competence of Workers.** Each Party shall ensure that its employees, agents or contractors which perform work in furtherance of this Agreement are adequately trained and skilled to comply with all applicable industry and governmental standards and regulations.
- c. **Interference.** The Parties shall not permit their employees, tenants, licensees, invitees, agents or independent contractors to cause interference with any existing small wireless facilities or other components. If a Party reasonably determines that interference is occurring, then that Party will meet and confer with the other Party within five (5) days of the Party's receipt of notice of interference from the other Party, and otherwise diligently work in good faith with the other Party to determine the root cause of the interference and to develop workable solutions to resolve the interference in a mutually acceptable manner.

7. **RF Emissions.** Licensee's operation of its small wireless facilities will comply with all federal communications commission regulations regarding RF emissions and exposure limitations. Licensee is allowed to install signage and other mitigation, such as a power cut-off switch on governmental poles, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an emergency, City's authorized field personnel will contact Licensee's designated point of contact with reasonable advance notice, but in no event less than 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 small wireless facilities and agree to limit the

frequency of power-downs and to restore power as promptly as much as reasonably possible.

8. **Damage to Pole, Structure, or Facility.** In the event damage occurs to a governmental pole, wireless support structure, or a small wireless facility thereon, the parties shall proceed under this paragraph.
  - a. **Nonstructural Damage to Support.** If the structure sustains nonstructural damage, City may repair the structure at its convenience. City may temporarily turn the power off to Licensee's facility if a City employee or agent needs to perform work near the facility. Prior to turning off power, City shall contact the emergency phone number listed on Licensee's facility to notify Licensee that power to the facility will be temporarily turned off. The City employee or agent shall promptly turn power to the facility back on when no longer working near the facility.
  - b. **Structural Damage to Support.** If a pole or structure sustains damage that appears to compromise its structural integrity, City will perform necessary work to eliminate any safety hazards within a reasonable period of time following such damage, but not more than ninety (90) days. If City fails to repair the pole or structure within ninety (90) days, Licensee shall have the ability to repair or replace the structure. City may temporarily turn the power off to Licensee's facility if a City employee or agent needs to perform work near the facility. As soon as practicable, City shall contact the emergency phone number listed on Licensee's facility to notify Licensee that power to the facility has been or will be temporarily turned off. City or Licensee may replace the pole or structure, or City may notify Licensee pursuant to this agreement that the pole or structure will be removed and relocated or abandoned. In the event the pole or structure is relocated, Licensee may submit a new application for an alternate pole or structure equivalent to Licensee's current use of the relocated structure or pole, in which case City shall waive the application fee and transfer all remaining rights to the new pole or structure. No annual rental rate or administrative fee may be charged to Licensee during the time that the pole or structure is not capable of supporting a small wireless facility.
  - c. **Damage to Facility.** If a facility sustains damage, Licensee may repair, replace, or remove the facility at its convenience in compliance with all applicable laws.
9. **Removal and Relocation.** In the event City desires to replace, relocate, modify, demolish, or in any way alter a governmental pole in connection with the construction or expansion of roads, streets, sidewalks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other capital improvement project within City's jurisdiction undertaken by or on behalf of City, Licensee shall remove or relocate the small wireless facility subject to the terms and conditions set forth herein.
  - a. **Notice.** City shall notify Licensee of the particular governmental pole that will be removed or relocated and provide Licensee with 90 days to remove any small wireless facility collocated thereon.
  - b. **Alternative Location.** At the request of Licensee, City and Licensee shall endeavor to identify an alternative governmental pole that provides substantially similar signal coverage for the small wireless facility as that of the governmental pole to be relocated or removed.

- c. **New Collocation Allowed.** If the governmental pole is relocated, Licensee shall be allowed to collocate its small wireless facility on the governmental pole at its new location, at the Licensee's option.
  - d. **Costs to Licensee.** Except as prohibited by law, the removal and/or relocation of the small wireless facility will be performed exclusively by Licensee at the Licensee's cost.
  - e. **Temporary Site.** Licensee shall have the right to operate a temporary cell site if feasible in a mutually agreeable location in the vicinity of the removed/relocated governmental pole during such relocation with no additional fee due to City
  - f. **Removal Terminates Rate.** Any rate due for a particular small wireless facility shall abate until a new collocation permit is issued for the small wireless facility at a new location.
  - g. **No New Fees.** Licensee shall not be required to pay any additional fee in connection with any relocation initiated by City.
  - h. **Licensee's Option to Remove.** If in Licensee's reasonable judgment no suitable relocation can be found, then Licensee shall have the right to remove the small wireless facility with no further fees, rates, or costs.
  - i. **Emergency Relocation.** Notwithstanding this section, in the event of an Emergency, City 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. City may take any action necessary to address the emergency.
10. **Abandonment.** If City determines to abandon any governmental pole and City decides not to relocate the governmental pole, then City shall give Licensee 90 days' prior written notice of City's intent to abandon the governmental pole. Within such time, Licensee shall remove or otherwise dispose of its small wireless facility. As an alternative to removal of the small wireless facility, City may allow Licensee to acquire title to the governmental pole at no cost to Licensee in "as is, where is" condition. If Licensee accepts title, then City shall promptly execute and deliver a bill of sale and assignment transferring the governmental pole to Licensee in "as is, where is" condition subject only to City's representation and warranty that City is the sole owner, and City owns the governmental pole 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 governmental pole which Licensee may elect to acquire title from City.
11. **Insurance.** Licensee shall carry the following insurance: (i) commercial general liability insurance written on ISO form CG 00 01 or its equivalent in an amount of \$3,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate, including products and completed operations; (ii) Workers' Compensation Insurance as required by law; and employers' liability insurance in an amount of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 disease policy limit. Licensee shall require its subcontractors to obtain and maintain substantially the same insurance as required by this Section 11.

The insurance coverages identified in this Section: (i) except the workers' compensation insurance, shall include the City as an additional insured as their interests may appear under this Agreement; (ii) will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City; (iii) contain a waiver of subrogation

for the City's benefit; and (iv) will be obtained from insurance carriers having an A.M Best rating of at least A-VII.

If requested, Licensee shall provide the City with a certificate of insurance to provide evidence of insurance. Licensee will provide the City with 30 days prior written notice of cancellation upon receipt of notice thereof from its insurer(s) of any required coverage that is not replaced. Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement.

12. **Indemnification.** Licensee shall indemnify and hold the City harmless against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of rights-of-way by Licensee or its employees, agents, or contractors arising out of the rights and privileges granted under this Agreement, except for any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents.

13. **Default and Remedies.** The Parties may enforce the provisions of this Agreement by any lawful means and consistent with the terms of this paragraph. Unless another procedure is required by state law or stated in this Agreement, a Party shall be in default of this Agreement only after one Party provides notice to the defaulting Party and the defaulting Party fails to remedy the default within 30 days after notice. If a Party is in default, the other Party may terminate the applicable collocation permit(s) pertaining to the default with 30 days' written notice. Within 30 days after its receipt of written notice of termination, Licensee shall remove all applicable small wireless facilities located on the City's governmental poles or other wireless support structures pertaining to the default.

14. **Miscellaneous.**

- a. **Definitions.** The terms and phrases used in this Agreement are intended to be consistent with Wis. Stat. § 66.0414(1).
- b. **Notice.** Notices required by this Agreement may be given by registered or certified mail by depositing the same in the United States mail or with a commercial courier. Unless either Party notifies the other of a change of address, notices shall be delivered as follows:

If to City:

City of West Allis  
7525 West Greenfield Avenue  
West Allis, WI 53214  
Attn: City Attorney

If to Licensee:

New Cingular Wireless PCS, LLC  
Attn: Tower Asset Group – Lease  
Administration  
Re: Wireless Installation on Public  
Structures(City of West Allis, WI)  
FA No.: \_\_\_\_\_  
1025 Lenox Park Blvd NE  
3rd Floor  
Atlanta, GA 30319

With a copy to:

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

City of West Allis ("City")

By: City of West Allis

Name: Pete Danitz

Its: City Engineer

Date: 1/2/2020

New Cingular Wireless PCS, LLC a  
Delaware limited liability company  
("Licensee")

By: AT&T Mobility Company, its Manager

By: 

Name: Blaine C. Thomas

Title: Director - Construction & Engineering

Date: 12/4/2019