

City of Puyallup
TELECOMMUNICATIONS MASTER PERMIT
for
NEW CINGULAR WIRELESS PCS, LLC

Table of Contents

	<u>Page</u>
Section 1 Master Permit Granted.....	3
Section 2 Authority Limited to Occupation of Public Rights-of-Way for Services.....	4
Section 3 Non-Exclusive Grant	5
Section 4 Term.....	6
Section 5 Location of Telecommunications Network Facilities.....	6
Section 6 Relocation of Telecommunications Network Facilities	6
Section 7 Undergrounding.....	10
Section 8 Maps and Records.....	11
Section 9 Work in the Rights-of-Way	13
Section 10 One Call Locator Service.....	16
Section 11 Safety Requirements	16
Section 12 Work of Contractors and Subcontractors.....	18
Section 13 Restoration after Construction	18
Section 14 Emergency Work/Dangerous Conditions	19
Section 15 Recovery of Costs, Taxes and Fees	20
Section 16 Small Cell Facilities.....	22
Section 17 Indemnification.....	27
Section 18 Insurance.....	29
Section 19 Abandonment of Grantee’s Telecommunications Network	32
Section 20 Bonds	33
Section 21 Remedies to Enforce Compliance	35
Section 22 Forfeiture and Revocation	35
Section 23 Non-Waiver	36
Section 24 Acceptance.....	36
Section 25 Survival.....	37
Section 26 Assignment	37

Section 27 Extension	39
Section 28 Entire Agreement.....	39
Section 29 Eminent Domain	39
Section 30 Vacation	39
Section 31 Notice.....	40
Section 32 Severability	40
Section 33 Compliance with Applicable Laws.....	41
Section 34 Amendment.....	41
Section 35 Attorneys' Fees	42
Section 36 Hazardous Substances	42
Section 37 Licenses, Fees and Taxes.....	42
Section 38 Miscellaneous	43
Section 39 Effective Date	44

Section 1 Master Permit Granted.

Section 1.1 This Master Permit is between the City of Puyallup, a Washington municipal corporation, (the “City”) and New Cingular Wireless PCS, LLC, (the “Grantee”). The City and Grantee are sometimes referred to hereinafter collectively as the “parties”.

Section 1.2 In return for promises made and subject to the stipulations and conditions stated herein, the City grants to Grantee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Cell Facilities, as defined in Section 2.2, for its telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Puyallup, as approved pursuant to City codes and permits issued pursuant to this Master Permit. Public “Rights-of-Way” means land acquired or dedicated for public roads and streets, but does not include: state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the right-of-way; federally granted trust lands or forest board trust lands; Lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Master Permit do not include: (i) buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

Section 1.3 This grant is in the nature of a master permit, as referenced in RCW 35.99.010(3) and is not in lieu of a specific use permit as may be required by City code or policy. Grantee’s use of the Master Permit Area as defined in Section 2 is subject to this Master Permit, Puyallup Municipal Code (“PMC”) Chapter 11.32 and all other ordinances, PMC provisions, rules and regulations adopted by the City relating to telecommunications services and right-of-way use as they are in effect at the time of the written acceptance of this Master Permit by Grantee, and as may be amended from time to time. In accepting this Master Permit, Grantee stipulates and agrees to the City’s authority to issue and require the Master Permit and stipulates and agrees to the other terms and conditions hereof.

Section 2 Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Master Permit Area”). The Grantee is authorized to place its Facilities in the Rights-of-Way only consistent with this Master Permit, the Puyallup Zoning Code, the Puyallup Comprehensive Plan, the current Public Works Engineering and Construction Standards, and the Puyallup Municipal Code (collectively the “Codes” or the “Code”). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Grantee other than for the purpose of providing telecommunications services. Grantee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the “Services”).

Section 2.2 As used herein, “Small Cell Facilities” or “Facilities” means that definition in 47 C.F.R. Section 1.6002(b)-(c)). Equipment enclosures with equipment generating noise that exceed the noise limits allowed in the Codes or associated permit are excluded from “Small Cell Facilities.” Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

Section 2.3 This Master Permit does not grant Grantee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third-party provider, Grantee, or a corporate affiliate of Grantee. Any entity that provides such wireline broadband transmission services must have a franchise or an independent master permit to use the Rights-of-Way outside of this Master Permit. Further, this Master Permit does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 2.4 Furthermore, this Master Permit does not grant Grantee the right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public or privately-owned poles or conduits is granted herein. Nothing contained within this Master Permit shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Grantee other than for the purpose of providing the Services, or to subordinate the primary use

of the Right-of-Way as a public thoroughfare. If Grantee desires to expand the Services provided within the City, it shall request a written amendment to this Master Permit. If Grantee desires to use City owned property, or to site new structures in the Rights-of-Way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

Section 2.5 Grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Master Permit provided:

- (a) Grantee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Master Permit;
- (b) Grantee may not grant rights to any customer or lessee that are greater than any rights Grantee has pursuant to this Master Permit;
- (c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Master Permit; and
- (d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Master Permit, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, master permit or other form of state wide approval.

Section 3 Non-Exclusive Grant.

This Master Permit is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises or master permits in, along, over, through, under, below, or across any said Rights-of-Way, provided such other uses do not unreasonably interfere with Grantee's existing Facilities. This Master Permit shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4 Term.

This Master Permit is granted for a period of not more than ten (10) years, beginning on the Effective Date of this Permit and subject to all termination clauses within this Permit.

Section 5 Location of Telecommunications Network Facilities.

Section 5.1 Grantee may locate its Facilities anywhere within the Master Permit Area consistent with the City's Public Works Engineering and Construction Standards and subject to the City's applicable Code requirements. Grantee shall not be required to obtain a new Master Permit to construct or acquire Facilities within the Master Permit Area, provided that Grantee does not expand its Services beyond those described in Section 2.

Section 5.2 To the extent that any Rights-of-Way within the Master Permit Area are part of the state highway system ("State Highways") are considered managed access by the City, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Grantee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Grantee specifically agrees that:

- (a) any pavement trenching and restoration performed by Grantee within State Highways shall meet or exceed applicable WSDOT requirements;
- (b) any portion of a State Highway damaged or injured by Grantee shall be restored, repaired and/or replaced by Grantee to a condition that meets or exceeds applicable WSDOT requirements; and
- (c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Master Permit with respect to any portion of a State Highway.

Section 6 Relocation of Telecommunications Network Facilities.

Section 6.1 Relocation Requirement. The City may require Grantee to protect, support, temporarily disconnect, relocate, remove, its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of

and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 6.1 shall be considered a "Public Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 6.1 shall be borne by Grantee.

Section 6.2 Relocation - Third Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Grantee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in Section 6.5. Grantee acknowledges and agrees that the placement of Small Cell Facilities on third party-owned structures does not convey an ownership interest in such structures. Grantee acknowledges and agrees, that to the extent Grantee's Small Cell Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

Section 6.3 Relocation - Grantee Owned Structures. The cost of relocation of any Grantee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Grantee may opt to pay for the cost of relocating its Small Cell Facilities in order to provide consideration for the City's approval to site a Small Cell Facility on Grantee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Project. For this Section 6.3, designation of the Right-of-Way for a Public

Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Cell Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 6.4 Locate. Upon request of the City, or a third party performing work in the Right-of-Way, and in order to facilitate the design of City street and Right-of-Way improvements, Grantee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 6.5 Notice and Relocation Process. If the City determines that the project necessitates the relocation of Grantee's existing Facilities, the following process shall apply:

- (a) The City shall consult with the Grantee in the predesign phase of any Public Project in order to coordinate the project's design with Grantee's Facilities within such project's area.
- (b) Grantee shall participate in predesign meetings until such time as (i) both parties mutually determine that Grantee's Facilities will not be affected by the Public Project, or (ii) until the City provides Grantee with written notice regarding the relocation as provided in subsection (d) below.
- (c) Grantee shall, during the predesign phase evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Grantee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

- (d) The City shall provide Grantee with its decision regarding the relocation of Grantee's Facilities as soon as reasonably possible, but in no event less than one hundred twenty (120) days prior to the commencement of the construction of such Public Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in this Section 6.5, the City shall notify the Grantee during the predesign meetings and the process mandated by the grant funding shall control.
- (e) After receipt of such written notice, Grantee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City. Such timeline may be extended by a mutual agreement.
- (f) Grantee shall complete relocation of its Facilities at no charge or expense to the City pursuant to the timeline provided by the City, or as otherwise modified by the City.
- (g) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of Grantee's Facilities, Grantee shall relocate its Facilities within the time period specified by the City.

Section 6.6 Alternative Arrangements. The provisions of this Section 6 shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 6.7 Contractor Delay Claims. Grantee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Grantee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Grantee. Grantee vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to,

payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such Grantee's caused delay in the Public Project.

Section 6.8 Indemnification. Grantee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 17, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Grantee to remove or relocate its Facilities as provided in this Section 6; provided, that Grantee shall not be responsible for damages due to delays caused by circumstances beyond the control of Grantee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 6.9 City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 6.1 through Section 6.5, then upon at least ten (10) days written notice to Grantee, the City may perform such work or cause it to be done, and the City's costs shall be paid by Grantee pursuant to Section 15.3 and Section 15.4.

Section 6.10 Survival. The provisions of this Section 6 shall survive the expiration or termination of this Master Permit during such time as Grantee continues to have Facilities in the Rights-of-Way.

Section 7 Undergrounding.

Section 7.1 Grantee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 16.3 and the Codes. Grantee acknowledges and agrees that if the City allows the placement of Small Cell Facilities above ground the City may, at any time in the future, require the conversion of Grantee's aerial facilities to an underground installation or relocated at Grantee's expense if the existing poles on which Grantee's Facilities are located are designated for removal due to a Public Project as described in Section 6. This Master Permit does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Grantee from any Code provision related to the siting of wireless facilities.

Section 7.2 Grantee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Grantee's Facilities to remain above ground, then Grantee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Grantee, at no cost to the City.

Section 7.3 Grantee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 7.3. Grantee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Grantee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Grantee shall remove such Facilities at Grantee's sole cost and expense. Grantee must apply and receive a permit, pursuant to Section 9.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 8.1.

Section 7.4 The provisions of this Section 7 shall survive the expiration, revocation, or termination of this Master Permit. Nothing in this Section 7 shall be construed as requiring the City to pay any costs of undergrounding any of the Grantee's Facilities.

Section 8 Maps and Records.

Section 8.1 Following any construction, excluding modifications that meets the same or substantially similar dimensions of the Small Cell Facility, Grantee shall provide the City with accurate copies of as-built plans and maps prepared by Grantee's design and installation contractors for all existing Small Cell Facilities in the Master Permit Area. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Grantee shall provide such maps within thirty (30) days following a

request from the City. Grantee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

Section 8.2 Within thirty (30) days of a written request from the City Engineer, the Grantee shall furnish the City with information sufficient to reasonably demonstrate that the Grantee has complied with all applicable requirements of this Master Permit.

Section 8.3 All books, records, maps, and other documents maintained by Grantee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 8.3 shall be construed to require Grantee to violate state or federal law regarding customer privacy, nor shall this Section 8.3 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 8.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Grantee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Grantee has with third parties.

Section 8.4 Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. Grantee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Grantee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Grantee can take appropriate steps to protect its interests.

Section 8.5 Nothing in Section 8.3 or Section 8.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Grantee that prohibits the disclosure of any such confidential records; however, in the

event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Grantee shall reimburse the City for any fines or penalties imposed for failure to disclose such records, due to Grantee's judicial intervention, as required hereunder within sixty (60) days of a request from the City.

Section 8.6 On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Master Permit in accordance with GAAP. If the audit shows that fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the total cost of the audit.

Section 9 Work in the Rights-of-Way.

Section 9.1 During any period of relocation, construction or maintenance, all work performed by Grantee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Grantee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 9 shall survive the expiration or termination of this Master Permit and during such time as Grantee continues to have Facilities in the Rights-of-Way.

Section 9.2 Whenever Grantee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition to receiving the permit, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Grantee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Grantee in the area shall be performed in accordance with applicable City Public Works Engineering and Construction Standards and warranted for a period of two (2) years. In no case

shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Master Permit ordinance.

Section 9.3 If the Grantee shall at any time plan to make excavations in any area covered by this Master Permit, the Grantee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- (a) Such joint use shall not unreasonably delay the work of the Grantee causing the excavation to be made;
- (b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- (c) To the extent reasonably possible, Grantee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.
- (d) Grantee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 9.4 At the discretion of the City Engineer, and depending on the impact to the usage of the Rights-of-Way, Grantee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Grantee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Grantee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Grantee's work shall, at the sole expense of Grantee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Grantee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 9.5 Grantee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Grantee's Facilities. The right to trim trees in this Section 9.5 shall only

apply to the extent necessary to protect above ground Facilities. Grantee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Grantee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Grantee. Grantee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Grantee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Grantee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Grantee's actions. Grantee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Grantee with regard to tree and/or natural growth trimming, damage, and/or removal. Grantee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Grantee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

Section 9.6 Grantee shall meet with the City and other Master Permit holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 9.7 Grantee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Grantee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9.8 Grantee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Master Permit. In order to avoid interference with the City's ability to maintain the Right-of-Way, Grantee shall provide a clear zone to meet the Public Works

Engineering and Construction Standards. If Grantee fails to comply with this provision, and by its failure, property is damaged, then Grantee shall be responsible for all damages caused thereby, including restoration.

Section 10 One Call Locator Service.

Prior to doing any work in the Rights-of-Way, the Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Grantee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Grantee's Facilities or for interruptions in service to Grantee's customers that are a direct result of Grantee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 11 Safety Requirements.

Section 11.1 Grantee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Grantee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Grantee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Grantee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Grantee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 11.2 If an unsafe condition or a violation of Section 11.1 is found to exist, and becomes known to the City, the City agrees to give Grantee written notice of such condition and afford Grantee a reasonable opportunity to repair the same. If Grantee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Grantee and reimbursed to the City pursuant to Section 15.3 and Section 15.4.

Section 11.3 Additional safety standards include:

- (a) Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.
- (b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.
- (c) Any opening or obstruction in the Rights-of-Way or other public places made by Grantee in the course of its operations shall be protected by Grantee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 11.4 Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Master Permit, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Grantee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Section 12 Work of Contractors and Subcontractors.

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Grantee and shall ensure that all such work is performed in compliance with this Master Permit and applicable law.

Section 13 Restoration after Construction.

Section 13.1 Grantee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) days after abandonment approved pursuant to Section 19, remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Grantee shall not be responsible for any changes to the Rights-of-Way not caused by Grantee or anyone doing work for Grantee nor for reasonable wear and tear. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 13.2 Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Master Permit Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Grantee pursuant to this Master Permit shall be performed in accordance with applicable City Public Works Engineering and Construction Standards and warranted for a period of two (2) years.

Section 13.3 If conditions (e.g. weather) make the complete restoration required under this Section 13 impracticable, Grantee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Grantee's sole cost and expense. Grantee shall promptly

undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 13.4 In the event Grantee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Grantee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Grantee in accordance with the provisions of Section 15.3 and Section 15.4 In addition, and pursuant to Section 15.3 and Section 15.4, the City may bill Grantee for expenses associated with the inspection of such restoration work. The failure by Grantee to complete such repairs shall be considered a breach of this Master Permit and is subject to remedies by the City including the imposition of damages consistent with Section 21.2.

Section 13.5 The provisions of this Section 13 shall survive the expiration or termination of this Master Permit so long as Grantee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 14 Emergency Work/Dangerous Conditions.

Section 14.1 In the event of any emergency in which any of Grantee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Grantee's Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity or the City, Grantee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of any person, entity or the City without first applying for and obtaining a permit as required by this Master Permit. However, this shall not relieve Grantee from the requirement of obtaining any permits necessary for this purpose, and Grantee shall apply for all such permits not later than the next succeeding day during which the Puyallup City Hall is open for business. The City retains the right and privilege to cut, move or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

Section 14.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements,

construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence or willful misconduct of the City, its employees, contractors, or agents. The City shall further not be liable to Grantee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 14 except to the extent caused by the sole negligence or willful misconduct of the City, its employees, contractors, or agents.

Section 14.3 Whenever the construction, installation or excavation of Facilities authorized by this Master Permit has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the City Engineer may direct Grantee, at Grantee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Grantee to request Grantee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Grantee shall be liable to the City for the costs thereof.

Section 15 Recovery of Costs, Taxes and Fees.

Section 15.1 Grantee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Master Permit pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Master Permit. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee. Grantee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Master Permit or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with

attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Master Permit or any ordinances relating to the subject for which a permit fee is not established, Grantee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

Section 15.2 Grantee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Grantee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any Grantee or permit holder who caused or contributed to the emergency situation.

Section 15.3 Grantee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Grantee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Grantee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Grantee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Grantee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Grantee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Grantee's Facilities or the routing or rerouting of any utilities so as not to interfere with Grantee's Facilities.

Section 15.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. In the alternative, the City may choose to charge a standard review rate as approved by the City Council. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Grantee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 15.5 Grantee hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Master Permit fee under the terms of this Master Permit, other than as described herein. The City hereby reserves its right to impose a Master Permit fee on Grantee if Grantee's operations as authorized by this Master Permit change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Grantee obtain a separate Master Permit for a change in use. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 15.6 Grantee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Grantee shall pay to the City the rate applicable to such taxable services under Puyallup Municipal Code Chapter 5.08, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Puyallup Municipal Code Chapter 5.08 shall control. In that event, the City may not enforce remedies under Section 21 or commence a forfeiture or revocation process pursuant to Section 22 until the dispute is finally resolved either consistent with Puyallup Municipal Code Chapter 5.08 or by judicial action and then only if the Grantee does not comply with such resolution. The parties agree however, that nothing in this Master Permit shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Puyallup Municipal Code Chapter 5.08 as may be permitted by law.

Section 16 Small Cell Facilities.

Section 16.1 City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7) and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Cell Facilities by Grantee, and Grantee shall promptly conform with all such requirements, unless compliance would cause Grantee to violate other requirements of law. This Master Permit does not prohibit the City

from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Cell Facility.

Section 16.2 City Approvals and permits. The granting of this Master Permit is not a substitute for any other City required approvals to construct Grantee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 9.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Grantee permission to build its specific Small Cell Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Master Permit Area. Such City Approvals shall be issued consistent with the Codes, state and federal laws governing wireless communication facility siting and shall be in addition to any permits required under Section 9.2. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as Right-of-Way use permits and traffic control permits.

Section 16.3 Preference for Existing Infrastructure; Site Specific Agreements.

- (a) Grantee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Cell Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Grantee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.
- (b) Grantee acknowledges and agrees that if Grantee requests to place new structures or replacement structures which are over 60 feet in the Rights-of-Way then Grantee may be required to enter into a site specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such

agreements may require a site specific charge paid to the City. The approval of a site specific agreement is at the discretion of each of the parties thereto.

- (c) Replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible provided that Grantee, or the pole owner at the Grantee's request, removes the old pole or structure promptly, but no more than thirty (30) days after the installation of the replacement pole or structure.
- (d) This Section 16.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Grantee from any Code provision related to the siting of wireless facilities.

Section 16.4 Concealment. Grantee shall construct its Facilities consistent with the concealment or stealth requirements as required by the Codes or in the applicable permit(s), in order to minimize the visual impact of such Facilities.

Section 16.5 Eligible Facilities Requests. The parties acknowledge that it is the intent of this Master Permit to provide general authorization to use the Rights-of-Way for Small Cell Facilities. The designs approved by the City for the installation of Small Cell Facilities, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

Section 16.6 Inventory. Grantee shall maintain a current inventory of Small Cell Facilities throughout the Term of this Master Permit. Grantee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this Master Permit, and shall be updated within thirty (30) days of a reasonable request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Cell Facility installation and photographs taken before and after the installation of the Small Cell Facility and taken from the public street. Small Cell Facilities that are considered Deactivated Facilities, as described in Section 19.1, shall be included in the inventory report and Grantee shall provide the same

information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Grantee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 16.7 Unauthorized Facilities. Any Small Cell Facilities installations in the City Right-of-Way that were not authorized under this Master Permit or other required City Approval (“Unauthorized Facilities”) will be subject to the payment of an Unauthorized Facilities charge by Grantee. City shall provide written notice to Grantee of any Unauthorized Facilities identified by City staff and Grantee shall have sixty (60) days thereafter in which to either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Failure to do either of the foregoing within such 60-day period (or longer than sixty (60) days if necessary upon the City’s consent so long as Grantee can demonstrate that it has submitted a complete small cell permit application to the City) will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand and 00/100 Dollars (\$1000.00) per Unauthorized Facility, per day starting on the sixty-first (61st) day, or the first day after the expiration of any extended period granted by the City, until such time as Grantee has obtained approval for the Unauthorized Facilities or has otherwise removed such Facilities. If the City does not approve the application for such Unauthorized Facilities and Grantee is unsuccessful in an appeal (if an appeal is requested), then Grantee shall remove the Unauthorized Facilities from the City’s Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. This Master Permit remedy is in addition to any other remedy available to the City at law or equity.

Section 16.8 Graffiti Abatement. As soon as practical, but not later than fourteen (14) days from the date Grantee receives notice or is otherwise aware, Grantee shall remove all graffiti on any of its Small Cell Facilities of which it is the owner of the pole or structure or on the Small Cells Facilities themselves attached to a third-party pole (i.e. graffiti on the shrouding protecting the radios). The foregoing shall not relieve Grantee from complying with any City graffiti or visual blight ordinance or regulation.

Section 16.9 Emissions Reports.

- (a) Grantee is obligated to comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards, whether such RF or EMF presence or exposure results from the Small Cell Facility alone or from the cumulative effect of the Small Cell Facility added to all other sources operated by Grantee or on behalf of Grantee on or near the specific pole or structure. Grantee shall comply with the RF emissions certification requirements of Puyallup Municipal Code Section 20.59.050.
- (b) Nothing in this Master Permit prohibits the City from requiring periodic testing of Grantee's Facilities. The City may inspect any of Grantee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Grantee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such notification shall be made verbally by calling 1-800-832-6662 and by written notice pursuant to Section 31. Grantee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of notice pursuant to Section 31. If Grantee's Facilities are found to exceed FCC standards, then Grantee shall reimburse the City for any costs incurred by the City for testing the Facility and providing notice as described in Section 15.3 and Section 15.4.

Section 16.10 Interference with Public Facilities. Grantee's Small Cell Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or the emergency communications operation or equipment. If the Small Cell Facilities cause such harmful interference, Grantee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Grantee power down the specific Small Cell Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days

after receipt of such written notice from the City of such interference, Grantee has not abated such interference, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 16.7 or removal by the City consistent with Section 14.

Section 16.11 Interference with Other Facilities. Grantee is solely responsible for determining whether its Small Cell Facilities interfere with telecommunications facilities of other utilities and Grantees within the Rights-of-Way. Grantee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Cell Facilities within the Master Permit Area. Grantee, in the performance and exercise of its rights and obligations under this Master Permit shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Master Permit.

Section 17 Indemnification.

Section 17.1 Grantee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees and agents from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property to the extent caused by or arising out of any acts or omissions of Grantee, its agents, servants, officers, or employees in the performance of this Master Permit and any rights granted within this Master Permit. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 17.2 Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance by Grantee of any of its obligations under this Section 17.

Section 17.3 The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City. Grantee may choose counsel to defend the City subject

to this Section 17.3. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Master Permit, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 17.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees or agents, the obligations of Grantee under the indemnification provisions of this Section 17, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Grantee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and

liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Grantee for claims made against the City by Grantee's employees. This waiver has been mutually negotiated by the parties.

Section 17.5 Notwithstanding any other provisions of this Section 17, Grantee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. In no event shall the City be responsible for indirect, special, consequential, or punitive damages or loses, including but not limited to lost income or business interruption, whether or not a party has been advised of the possibility of such damage and notwithstanding the theory of liability in which an action may be brought. Grantee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Grantee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities.

Section 17.6 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Master Permit.

_____ New Cingular Wireless _____ City of Puyallup

Section 18 Insurance.

Section 18.1 Grantee shall procure and maintain for so long as Grantee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Grantee under this Master Permit. Grantee shall cause each and every contractor or subcontractor

to provide insurance coverage that complies with all applicable requirements of the Grantee-provided insurance as set forth herein, except the Grantee shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. Grantee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Grantee shall provide a copy of a certificate of insurance and blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Master Permit, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits of \$5,000,000 combined single limit each accident for bodily injury and property damage;
- (b) Commercial General Liability insurance, written on an occurrence basis with total limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises; operations; independent contractors; products and completed operations; explosion, collapse and underground (XCU);
- (c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable;
- (d) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate; and
- (e) Excess Umbrella liability policy with limits of \$10,000,000 per occurrence and in the aggregate. Grantee may use any combination of primary and excess to meet required total limits.

Section 18.2 Payment of deductible or self-insured retention shall be the sole responsibility of Grantee.

Section 18.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Grantee shall include the City, its officers, officials, and employees ("Additional Insureds"), as an additional insured as their interest may appear under this Master Permit with regard to activities performed by Grantee. The coverage

shall contain no special limitations on the scope of protection afforded to the Additional Insureds except for claims arising from the sole negligence of the additional insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee shall provide to the City a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's required general and auto liability insurance shall be primary insurance with respect to the Additional Insureds. Any insurance maintained by the Additional Insureds shall be in excess of Grantee's required insurance and shall not contribute with it.

Section 18.4 Upon receipt of notice from its insurer(s) Grantee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 18 that is not replaced. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 18. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 18 shall be considered a material breach of this Master Permit and subject to the City's election of remedies described in Section 21.2 below. Notwithstanding the cure period described in Section 21.1, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 18.5 Grantee's maintenance of insurance as required by this Section 18 shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Master Permit shall not be construed to excuse unfaithful performance by Grantee.

Section 18.6 The City may review all insurance limits once every calendar year during the Term, and may make reasonable adjustments in the limits in accordance with reasonably prudent risk management practices and insurance industry standards upon thirty (30) days' prior written notice to Grantee. Grantee shall then issue a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Grantee shall furnish certified

copies of all required insurance policies, including endorsements, required in this Master Permit and evidence of all contractors' coverage.

Section 18.7 As of the Effective Date of this Master Permit, Grantee is not self-insured for any required coverage other than worker's compensation and pollution liability. Should Grantee wish to become self-insured at the levels outlined in this Master Permit at a later date. Grantee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Grantee's, or its parent company's, most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Grantee or its parent company is responsible for all payments within the self-insured retention; and (iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Master Permit.

Section 19 Abandonment of Grantee's Telecommunications Network.

Section 19.1 Where any Facilities or portions of Facilities are no longer needed and their use is to be discontinued, the Grantee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 16.6. Deactivated Facilities, or portions thereof, shall be completely removed within sixty (60) days and the site, pole or infrastructure restored to its pre-existing condition, reasonable wear and tear excepted.

Section 19.2 If Grantee leases a structure from a landlord and such landlord later abandons the structure, Grantee shall remove its Facilities from the abandoned structure within ninety (90) days of such notification from the landlord at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 6 above shall apply.

Section 19.3 Upon the expiration, termination, or revocation of the rights granted under this Master Permit, Grantee shall remove all of its Facilities from the Rights-of-Way within one hundred twenty (120) days of receiving written approval from the Public Works Director or his/her designee and all necessary permits are obtained. The Facilities, in whole or in part, may not be abandoned by Grantee without written approval by the City. Any plan for abandonment or removal of Grantee's Facilities must be first approved by the Public Works Director or his/her designee,

and all necessary permits must be obtained prior to such work. Grantee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Grantee shall not be responsible for any changes to the Rights-of-Way not caused by Grantee or any person doing work for Grantee, or reasonable wear and tear. Grantee shall be solely responsible for all costs associated with removing its Facilities.

Section 19.4 Notwithstanding Section 19.1 above, the City may permit Grantee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, Grantee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 19.5 Any Facilities which are not removed within one hundred eighty (180) days of either the date of termination or revocation of this Master Permit or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Grantee. Nothing contained within this Section 19 shall prevent the City from compelling Grantee to remove any such Facilities through judicial action when the City has not permitted Grantee to abandon said Facilities in place.

Section 19.6 The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Master Permit and for so long as Grantee has Facilities in Rights-of-Way.

Section 20 Bonds.

Section 20.1 If required by the City Engineer or his/her designee, Grantee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 150% of the estimated cost of restoring the Rights-of-Way and other City properties affected by the construction, prior to commencement of any such work or such lesser amount as deemed appropriate by the City Engineer. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by

the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 20.2. Compliance with the Performance Bond requirement of the City's current Public Works Engineering and Construction Standards shall satisfy the provisions of this Section 20.1.

Section 20.2 Grantee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of restoring the Rights-of-Way and other City properties affected by the construction. The Maintenance Bond in this Section 20.2 must be in place prior to City's release of the bond required by Section 20.1. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 20.2.

Section 20.3 Grantee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Master Permit Bond") running or renewable for the term of this Master Permit, in a form and substance reasonably acceptable to City. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Master Permit following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Grantee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of this Section 20 shall constitute a material breach of this Master Permit. The amount of the bond shall not be construed to limit Grantee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 21 Remedies to Enforce Compliance.

Section 21.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Grantee to comply with the provisions of the Master Permit and to recover damages and costs incurred by the City by reason of Grantee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Master Permit, it is not the intention of the City or Grantee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 21.2 If Grantee shall violate, or fail to comply with any of the provisions of this Master Permit, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Master Permit, the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Master Permit Bond set forth in Section 20.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 22 Forfeiture and Revocation.

If Grantee willfully violates or fails to comply with any material provisions of this Master Permit, then at the election of the Puyallup City Council after at least thirty (30) days written notice

to Grantee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Master Permit may be revoked by the Hearing Examiner after a hearing held upon such notice to Grantee. Such hearing shall be open to the public and Grantee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Hearing Examiner, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Master Permit will be terminated, or whether lesser sanctions should otherwise be imposed. The Hearing Examiner shall in its sole discretion fix an additional time period to cure violations if the breach cannot be cured within (30) thirty days. If the deficiency has not been cured at the expiration of any additional time period or if the Hearing Examiner does not grant any additional period, the Hearing Examiner may by resolution declare the Master Permit to be revoked and forfeited or impose lesser sanctions. If Grantee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Grantee is otherwise in compliance with the Master Permit.

Section 23 Non-Waiver.

The failure of the City to insist upon strict performance of any of the covenants and agreements of this Master Permit or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 24 Acceptance.

Grantee shall execute and return to the City its execution and acceptance of this Master Permit in the form attached hereto as Exhibit A. In addition, Grantee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 18, any Performance Bond, if applicable, pursuant to Section 20.1 and the Master Permit Bond required pursuant to Section 20.3. The administrative fee pursuant to Section 15.1 is due within thirty (30) days of receipt of the invoice from the City.

Section 25 Survival.

All of the provisions, conditions, and requirements of Section 6, Section 7, Section 9, Section 13, Section 17, Section 18, Section 19, Section 25, and Section 27, of this Master Permit shall be in addition to any and all other obligations and liabilities Grantee may have to the City at common law, by statute, or by contract, and shall survive the City's Master Permit to Grantee for the use of the Master Permit Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Master Permit shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Grantee and all privileges, as well as all obligations and liabilities of Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Grantee is named herein.

Section 26 Assignment.

Section 26.1 This Master Permit may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Grantee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Grantee may freely assign this Master Permit in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or for collateral security purposes. Grantee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Master Permit shall be deemed to occur based on the public trading of Grantee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Master Permit.

Section 26.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the ultimate ownership or working control of Grantee, ownership or working control of the Facilities, ownership or working control of affiliated entities having

ownership or working control of Grantee or of the Facilities, or of control of the capacity or bandwidth of Grantee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Grantee. Every change, transfer, or acquisition of control of Grantee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Grantee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Master Permit, following the revocation procedure described in Section 22 above, or prior to any such revocation by the City, Grantee may revoke its request for consent to any such assignment, in which case, this Master Permit shall continue in full force. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Grantee's Services. Grantee shall reimburse the City for all costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Master Permit, in accordance with the provisions of Section 15.3 and Section 15.4, and shall pay the applicable application fee.

Section 26.3 Grantee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Grantee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Master Permit, and Grantee shall furnish, upon request from the City, a copy of any such lease or agreement, provided that Grantee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Master Permit and applicable City codes. Grantee's obligation to remain fully responsible for compliance with the

terms under this Section 26.3 shall survive the expiration of this Master Permit but only if and to the extent and for so long as Grantee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27 Extension.

If this Master Permit expires without renewal, the City may, subject to applicable law:

- (a) Allow Grantee to maintain and operate its Facilities on a month-to-month basis, provided that Grantee maintains insurance for such Facilities during such period and continues to comply with this Master Permit; or
- (b) The City may order the removal of any and all Facilities at Grantee's sole cost and expense consistent with Section 19.

Section 28 Entire Agreement.

This Master Permit constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Master Permit.

Section 29 Eminent Domain.

The existence of this Master Permit shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Grantee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Master Permit.

Section 30 Vacation.

If at any time the City, by ordinance, vacates all or any portion of the area affected by this Master Permit, the City shall not be liable for any damages or loss to the Grantee by reason of such vacation. The City shall notify the Grantee in writing not less than sixty (60) days before vacating all or any portion of any such area, in which Grantee is located. The City may, after sixty (60) days written notice to the Grantee, terminate this Master Permit with respect to such vacated area.

Section 31 Notice.

Any notice required or permitted under this Master Permit shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF PUYALLUP

Attn: City Engineer
333 S. Meridian
Puyallup, WA 98371

NEW CINGULAR WIRELESS PCS, LLC

Attn: Network Real Estate Administration
Site No. City of Puyallup Master Permit
Agreement (WA)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Puyallup Master Permit
Agreement (WA)
208 S. Akard Street
Dallas, TX 75202-4206

Section 32 Severability.

If any section, sentence, clause or phrase of this Master Permit should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Master Permit unless such invalidity or unconstitutionality materially alters the rights, privileges,

duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Master Permit materially affected by such court's ruling.

Section 33 Compliance with Applicable Laws.

Grantee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Master Permit, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause Grantee to violate other requirements of law. Grantee further expressly acknowledges that following the approval of this Master Permit, the City may modify its Codes to address small cell deployment and such Code modifications shall apply to Grantee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Master Permit and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Grantee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Grantee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34 Amendment.

The City reserves the right at any time to amend this Master Permit to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with ninety (90) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Grantee

makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 35 Attorneys' Fees.

If a suit or other action is instituted in connection with any controversy arising out of this Master Permit, each party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 17 of this Master Permit.

Section 36 Hazardous Substances.

Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Grantee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees and agents harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control, whether or not intentional.

Section 37 Licenses, Fees and Taxes.

Prior to constructing any improvements, Grantee shall obtain a business or utility license from the City. Grantee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Grantee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and

zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 38 Miscellaneous.

Section 38.1 City and Grantee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Master Permit.

Section 38.2 This Master Permit shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Master Permit shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

Section 38.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Grantee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Grantee by any person or entity.

Section 38.6 This Master Permit may be enforced at both law and equity.

Section 38.7 Grantee acknowledges that it, and not the City, shall be responsible for the premises and its equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the Facilities or the Grantee's equipment is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe

allowed by the citing agency, the City may either terminate this Master Permit immediately on notice to the Grantee or proceed to cure the conditions of noncompliance at the Grantee's expense.

Section 39 Effective Date.

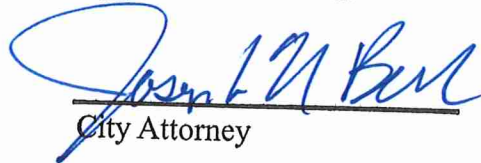
The provisions of this Master Permit shall be effective as of 8/22/19, and remain in force and effect for the remainder of the term, as specified in Section 4; provided, that if Grantee does not accept this Master Permit within fourteen (14) days of the effective date by its written acceptance by Grantee, signed by its proper officers, and filed with the Public Works Director, this Master Permit shall become null and void, provided further that the Master Permit will not be valid or effective until the Grantee provides the City with evidence of adequate insurance pursuant to Section 18, a performance bond pursuant to Section 20 and the administrative fee pursuant to Section 15.

APPROVED:



Hans Hunger, P.E.
CITY ENGINEER

Approved as to form:



City Attorney

EXHIBIT A

STATEMENT OF ACCEPTANCE

New Cingular Wireless PCS, LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Master Permit attached hereto and incorporated herein by this reference.

NEW CINGULAR WIRELESS PCS, LLC

By: AT& Mobility Corporation
Its: Manager

By: [Signature] Date: 8-14-19
Name: Wayne Wooten
Title: Director

STATE OF OREGON)
)ss.
COUNTY OF WASHINGTON)

On this 14 day of August, 2019, before me the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared, Wayne Wooten, as Director of New Cingular Wireless PCS, LLC, for AT&T Mobility Corporation, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

[Signature]
Signature

Rochelle Johnson Hunter
NOTARY PUBLIC in and for the State of Oregon, at Tualatin, Oregon Office AT&T.

MY COMMISSION EXPIRES: April 11, 2023

