

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Authorization for the City Manager to Execute a Telecommunication Facilities Lease Agreement and Memorandum of Lease with Cingular Wireless
<b>DEPARTMENT:</b>	Parks, Recreation and Cultural Services (PRCS)
<b>PRESENTED BY:</b>	Dick Deal, Director of PRCS

**PROBLEM/ISSUE STATEMENT:**

Staff requests City Council authorize the City Manager to execute a telecommunications lease agreement with Cingular Wireless for installation of telecommunication antenna and supporting facilities.

**DISCUSSION:**

Cingular Wireless desires to enter into a lease agreement with the City of Shoreline for 216 square feet of space in Hamlin Park for housing, construction and operation of a telecommunications antenna and supporting facilities. The lease agreement is for a term of five (5) years, with two (2) renewable options of five (5) years each. Cingular will pay the City of Shoreline \$1,000 per month to lease the space, and there will be a 3% annual increase in rent.

The lease also includes the following provisions:

- Substantial expansion of the facilities will result in review of the rental rate.
- Cingular is obligated to cure any violation or defaults prior to renewal of the lease.
- The facilities cannot be located or maintained so as to interfere with use of public ways.
- The facilities must be maintained in good and safe condition, and the City has a right to inspect the facilities at any time.
- The facilities can be relocated if the City determines relocation is necessary, or can be removed in the event of an emergency.
- The City may terminate or revoke the lease if Cingular defaults or violates certain lease provisions
- Upon expiration of the lease and notice by the City, Cingular will remove all improvements.
- Subleasing is prohibited.

**FINANCIAL IMPACT:**

The City of Shoreline will receive \$1,000 per month from Cingular Wireless, with annual increases of 3%.

### **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to execute the Telecommunications Facilities Lease Agreement and Memorandum of Lease with Cingular Wireless.

Approved By: City Manager  City Attorney Fpe

### **ATTACHMENTS**

**Attachment A:** Telecommunications Facilities lease Agreement and Memorandum of Lease

## TELECOMMUNICATIONS FACILITIES LEASE AGREEMENT

**THIS LEASE AGREEMENT** entered into by and between the City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington, as Lessor (hereinafter referred to as "City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company (hereinafter referred to as "Lessee").

W I T N E S S E T H:

**1. PREMISES.** The City owns the real property known as Hamlin Park, Shoreline, WA 98310 (Assessor's Parcel Number 1626049083), legally described in Exhibit A. The City leases to the Lessee 216 square feet of space (12' x 18') located at Hamlin Park, as depicted in Exhibit B, for housing, installing, constructing, operating and maintaining certain telecommunications facilities (hereinafter referred to as "Premises"). Lessee accepts the Premises for such purpose, subject to the considerations, terms and conditions specified in this Telecommunications Facilities Lease Agreement (hereinafter referred to as "Lease").

**2. DEFINITIONS.** For the purpose of this Lease, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings:

**"Commencement Date"** means the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work.

**"Person"** means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers;

**"Public street"** means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes;

**"Public way"** means and includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a permit or lease to occupy and use such streets and easements for telecommunications facilities;

**"Telecommunications carrier"** means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service;

**“Telecommunications facilities”** means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, towers, electronics, equipment storage structures and other appurtenances used or to be used to transmit, receive, distribute, provide, house or offer telecommunications services;

**“Telecommunications provider”** means and includes every person who provides telecommunications services over telecommunications facilities without any ownership or management control of the facilities;

**“Telecommunications service”** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

**“Utility easement”** means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

**3. USES AND PURPOSES.** Lessee shall have the use and occupancy of the Premises for the purpose of transmission and reception of telecommunication and signals in any and all frequencies that Lessee is allowed to use by the Federal Communications Commission using real property and telecommunications facilities approved in Exhibit B. Lessee shall be responsible for adherence to all federal, state and local regulations pertaining to the operation of a communications facility.

Lessee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities, as described in Exhibit B after obtaining required permits.

City shall provide Lessee access to the Premises at all times adequate to service the Premises and the telecommunication facilities at all times during this Lease. Lessee shall have the right to use existing park access drives and parking spaces. Lessee agrees to provide the City with a schedule outlining the frequency of required visits (e.g., quarterly maintenance check, monthly site cleanup, etc.), and to give the City at least five (5) days notice prior to the use of substantial and/or heavy equipment and the excessive use of parking spaces.

Lessee shall provide the City with a list of all authorized individuals who will have access to the Premises. Notification of changes to the list shall be provided to the City within 24 hours by telephone or fax from the point of contact identified in Section 40(G), which notice shall be followed by written notification pursuant to Section 40(G). Lessee shall be responsible for conducting appropriate background checks of all of their employees.

Employees visiting the Premises shall be clearly identifiable as employees of the Lessee either by uniform identification badge or marked company vehicle.

4. **NON-EXCLUSIVE LEASE.** This Lease is nonexclusive and does not preclude the City from granting a similar lease, right, license, franchise, etc. to other carriers, providers or other persons for telecommunications or any other purpose.

5. **TERM OF LEASE.** This Lease shall be valid for a term of five years commencing on the Commencement Date and terminating at 11:59 p.m. on the day before the five (5) year anniversary of the Commencement Date. Lessee shall have the right to extend the Term of this Lease for two (2) additional terms (each a "Renewal Term") of five (5) years each. The Renewal Terms shall be on the same terms and conditions as set forth herein. Lessee shall provide written notice to City of its intent to extend each Renewal Term at least thirty (30) days before the commencement of each Renewal Term.

6. **RIGHTS GRANTED.** This Lease does not convey any right, title or interest in the City property, but shall be deemed the right only to use and occupy the City property for the limited purposes and term stated in the Lease. Further, this Lease shall not be construed as any warranty of title.

7. **INTERFERENCE WITH OTHER USERS.** The Lessee acknowledges that the City may enter into leases with other tenants for their equipment and telecommunications facilities for the purposes of transmitting and receiving telecommunication signals from City property. The City, however, is not in any way responsible or liable for any interference with Lessee's use of the City property which may be caused by the use and operation of any other tenant's equipment, even if caused by new technology. In the event that any other tenant's activities interfere with the Lessee's use of the City property, and such use or operation was not in existence on the date of execution of this Lease, and the Lessee cannot resolve this interference with the other tenants, the City will, upon written request by Lessee, cause such interfering use to cease. The Lessee shall cooperate with all other tenants to identify the causes of and work towards the resolution of any electronic interference problem. In addition, the Lessee agrees to eliminate any radio or television interference caused to City-owned facilities or surrounding residences at Lessee's own expense and without installation of extra filters on City-owned equipment. Lessee further agrees to accept such interference as may be received from City operated telecommunications or other City facilities located upon the City property subject to this Lease except those City antenna sites placed upon Lessee's facilities pursuant to Section 10(B).

8. **OWNERSHIP AND REMOVAL OF IMPROVEMENTS.** All buildings, landscaping and all other improvements, except telecommunications facilities, shall become the property of the City upon expiration or termination of the Lease. In the event that the City requires removal of such improvements after termination of the Lease, such removal shall be accomplished at the sole expense of the Lessee and completed within 30 days after receiving notice from the City requiring removal of the improvements. Additional time may be granted

upon the discretion of the City which approval shall not be unreasonably withheld. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall, at the City's option, if not removed by the Lessee upon 30 days written notice from the City, be removed and stored at the expense of Lessee. Stored telecommunications facilities that are not claimed by the Lessee within six (6) months from termination of the Lease shall become the property of the City.

#### **9. CANCELLATION OF LEASE BY LESSEE.**

**A.** All Leases are contingent upon the Lessee obtaining all necessary permits, approvals and licenses for the proposed facilities. In the event that the Lessee is unable to obtain all such permits, approvals and licenses, it may cancel its lease, and obtain a pro rata refund in any rents paid, without further obligation by giving 30 days prior written notice to the City. Lessee agrees to restore City property to original condition if cancellation is requested.

**B.** In the event Lessee determines that the Premises are unsuitable for its intended purpose, or if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, the Lessee shall have the right to cancel the Lease upon 180 days written notice to the City. However, no prepaid rent shall be refundable; except in the event any changes occur with respect to the City's use of the property subsequent to the effective date of this Lease (including but not limited to additional Lessees as permitted by the City) and such changes result in the property becoming unsuitable for Lessee's intended purpose.

#### **10. COMPENSATION TO THE CITY.**

**A.** Starting on the Commencement Date and on the first day of each month thereafter during the term of the Lease, Lessee shall pay rent at a rate of One Thousand and No/100 Dollars (\$1,000.00) per month, prorated for any partial months. Substantial expansion of the initial configuration contained in Exhibit B will result in review and possible re-negotiation of the rental rate contained herein. Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent for the previous year.

Any payments received after fifteen (15) days after the due date shall include a late payment penalty of 2% of the annual rental fee for each day or part thereof past the due date.

**B.** Additional Consideration. City shall be allowed, at City's sole expense, to attach City's communication antennas to Lessee's telecommunications tower provided City first obtains Lessee's prior written consent for such attachments. Such consent shall not be unreasonably withheld. Lessee's approval for said attachments shall be contingent upon determining whether Lessee's tower is properly engineered to accommodate City's antenna system and such transmission shall not result in any impairment or diminution in the quality of Lessee's service. Further, said approval shall be given only after Lessee has reviewed and approved City's engineering plans for said antenna attachments in a location specified by Lessee.

Approval shall not be unreasonably withheld. Upon written approval by Lessee, said attachments shall be installed by qualified licensed contractors and in accordance with Lessee's directives for the method of installment and with permits issued by all applicable governmental authorities having jurisdiction which shall first be obtained by City at its sole expense. City acknowledges and agrees that Lessee reserves the right to relocate City's antennas at any time(s) to accommodate modifications required for Lessee's future system requirements, provided such relocation shall provide equivalent quality of service after such relocation.

**11. AMENDMENT OF LEASE.** Except as provided within the existing Lease, a new Lease shall be required of any telecommunications carrier or other entity that desires to substantially expand, modify, or relocate its telecommunications facilities or other equipment located upon the Premises. If ordered by the City to locate or relocate its telecommunications facilities or other equipment on the City property pursuant to Section 19, the City shall grant a lease amendment.

**12. OBLIGATION TO CURE AS A CONDITION OF RENEWAL.** No Lease shall be renewed until any ongoing violations or defaults in the Lessee's performance of the Lease have been cured, or a plan detailing the corrective action to be taken by the Lessee has been approved by the City.

**13. IMPROVEMENTS.** During the term of this Lease if Lessee wishes to substantially expand the initial configuration contained in Exhibit B, Lessee will provide at least thirty (30) days notice to City. Substantial expansion may require a new Lease.

**14. POLICE POWER.** In accepting this Lease, the Lessee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

**15. INTERFERENCE WITH THE PUBLIC WAYS.** The Lessee shall not locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities which interfere with public ways shall be moved by the Lessee, at the Lessee's cost, temporarily or permanently, as determined by the City Public Works Director.

**16. REPAIR AND EMERGENCY WORK.** In the event of an unexpected repair or emergency, the Lessee may commence such repair and emergency response work as required under the circumstances, provided the Lessee shall notify the City as promptly as reasonably possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

**17. MAINTENANCE OF LEASE FACILITIES.** The Lessee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements. Lessee shall not permit waste, damage, or injury to the premises including any City property, public ways of the City, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. Lessee shall not restrict site access to City. City shall have the exclusive right to inspect the Lessee's telecommunications facilities and equipment at any time during the term of this Lease to ensure compliance with the terms and conditions herein; Provided, however, Lessee has the right to be present at all inspections of Lessee's telecommunications facilities and equipment, and City shall give Lessee at least 24 hours prior notice of such intent.

**18. SIGNAGE.** Lessee shall display proper signage as required by the FCC as well as current signage on telecommunication facilities identifying Lessee, address and a 24 hour phone number. Signage shall be posted and clearly visible at all times.

**19. RELOCATION OR REMOVAL OF FACILITIES.** Within one hundred eighty (180) days following written notice from the City, the Lessee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways or upon City property whenever the City shall have determines that such removal, relocation, change or alteration is reasonably necessary for:

**A.** The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways or City property; and

**B.** The operations of the City or other governmental entity in or upon the public ways or City property.

The City will allow Lessee to relocate the telecommunications facilities to another comparable, mutually agreeable location in Hamlin Park. Additional time for removal or relocation may be granted at the discretion of the City which extension shall not be unreasonably withheld. If Lessee fails to remove the property upon request by the City, Lessee agrees to reimburse the City for any and all removal costs incurred by the City.

**20. REMOVAL OF UNAUTHORIZED FACILITIES.** Within thirty (30) days following written notice from the City, Lessee or any person who owns, controls or maintains on behalf of Lessee any unauthorized telecommunications system, facility or related appurtenances within the public ways or real property of the City shall, at its own expense, remove such facilities or appurtenances from the public ways or property of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

**A.** Upon expiration or termination of the Lessee's Lease without approved extension or renewal;

**B.** Upon abandonment of a facility within the public ways or real property of the City. Any property of a Lessee shall be deemed abandoned if left in place 30 days after expiration or termination of the Lease;

**C.** If the system or facility was constructed or installed without the prior grant of a Lease;

**D.** If the system or facility was constructed or installed without the prior issuance of a required City permits; and

**E.** If the system or facility was constructed or installed at a location not permitted by the Lease.

Provided, however, that the City may, in its sole discretion, allow a Lessee, or other such persons who may own, control, or maintain telecommunications facilities within the public ways or property of the City to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a Lessee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon authorized permanent abandonment of the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property in which event, Lessee shall have no further obligations or liability with respect to such property or facilities. The provisions of this Section shall survive the expiration, revocation, or termination of the Lease granted hereunder. If the City does not authorize abandonment and Lessee fails to remove such facilities within thirty (30) days following notice, Lessee agrees to reimburse the City for any and all costs incurred by the City for facilities removal.

**21. EMERGENCY REMOVAL OR RELOCATION OF FACILITIES.** The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the City and upon City property, as the City may determine in good faith to be necessary in response to any public health or safety emergency. The City shall not be liable to Lessee, or any other party 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.

**22. DAMAGE TO FACILITIES.** Unless directly and proximately caused by the negligent, willful, intentional or malicious acts by the City not otherwise authorized herein, the City shall not be liable for any damage to or loss of any telecommunications facility upon City property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City.

**23. RESTORATION OF PUBLIC WAYS, OTHER WAYS AND CITY PROPERTY.**

**A.** When the Lessee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or City property, or when Lessee, or any person acting on its behalf damages any public ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to City construction standards as adopted before the work was undertaken, unless otherwise directed by the City. Lessee shall obtain all requisite permits for such work.

**B.** If weather or other conditions do not permit the complete restoration required by this Section, the Lessee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Lessee's sole expense and the Lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

**C.** The Lessee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

**D.** The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways, other ways, and City property following any construction and restoration activities therein. Further, the provisions of this Section shall survive the expiration, revocation, or termination of this Lease.

**24. FACILITIES MAPS.** The Lessee shall provide the City with a map or maps accurately reflecting the horizontal and vertical location and configuration of all of its telecommunications facilities within the public ways and upon City property. The Lessee shall provide the City with updated maps upon request by the City.

**25. BOOKS, RECORDS AND MAPS.** All books, records, maps and other documents maintained by the Lessee with respect to its telecommunications facilities on the Premises shall be made available for inspection by the City at reasonable times and intervals at Lessee's offices where such records are ordinarily stored upon fifteen (15) days prior written notice; *Provided, however*, that nothing in this Section shall be construed to require the Lessee to violate state or federal law regarding subscriber privacy, nor shall this Section be construed to require the Lessee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

**26. SUB-LEASING.** Lessee is not permitted to sublet the Premises.

27. **UTILITIES.** Electricity, HVAC and telephone service, or other utilities are to be provided to the Premises and Site at Lessee's expense and as outlined in Exhibit B. City shall cooperate with Lessee in obtaining utility service.

28. **LICENSES AND TAXES.** Upon commencement of the Lease, Lessee shall be responsible for paying real or personal property, applicable excise leasehold, business and occupation, and/or other taxes or licenses which may in the future be assessed as a direct result of the Lessee's operations at the telecommunications facilities described herein.

29. **INSURANCE.** The Lessee shall, as a condition of the Lease, secure and maintain the following liability insurance policies insuring both the Lessee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Lessee:

A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

- (1) \$2,000,000.00 for bodily injury or death to each person;
- (2) \$2,000,000.00 for property damage resulting from any one accident; and
- (3) \$2,000,000.00 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000.00 for each person and \$2,000,000.00 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.00;

E. The liability insurance policies required by this Section shall be maintained by the Lessee throughout the term of the Lease, and such other period of time during which the Lessee is operating without a Lease hereunder, or is engaged in the removal of its telecommunications facilities. The Lessee shall provide an insurance certificate, together with an endorsement designating the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any facilities pursuant to said Lease. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Lessee.

The Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Lessee's insurance and shall not contribute with it. The City shall be provided thirty (30) days advance notice of cancellation of any coverages required in 29.A. above;

F. Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Lessee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

### **30. GENERAL INDEMNIFICATION.**

A. Lessee covenants not to bring suit against the City and hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officers, employees, agents and volunteers from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the Lessee might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of Lessee's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the Lessee, its agents, employees, representatives or assigns. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of the City. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

B. Lessor covenants not to bring suit against Lessee and hereby agrees to defend, indemnify, and hold harmless Lessee, its directors, officers, employees and agents from and against any and all liability, loss, costs, damage, and expense, including costs and attorney fees in defense thereof, and including claims by the Lessee's own employees to which the City might otherwise be immune under Title 51 RCW, because of actions, claims or lawsuits for damages resulting from personal or bodily injury, including death at any time resulting therefrom, sustained or alleged to have been sustained by any person or persons, and on account of damage to property, arising or alleged to have arisen directly or indirectly out of or in consequence of the City's performance of this Agreement, whether such injuries to persons or damage to property is due to the negligence of the City, its officers, employees, agents and volunteers. This provision shall be inapplicable to the extent such damage or injury is judicially found to be caused by the negligence of Lessee. This provision waiving immunity for claims arising out of Title 51 RCW was specifically negotiated by the parties.

C. Lessee assumes the risk of damage to its facilities located in the City's public ways, rights-of-way, easements, and property from activities conducted by the City, its officers, employees, agents, and volunteers, except for damage caused by the City's negligence or willful misconduct. The Lessee releases and waives any and all claims against the City, its officers, employees, agents, and volunteers for damage to or destruction of the Lessee's facilities except to the extent any such damage or destruction is caused by the negligent, grossly negligent or willful and malicious action of the City, its officers, employees, agents, or volunteers.

**31. CONSTRUCTION AND COMPLETION BOND.** A performance bond written by a corporate surety acceptable to the City equal to at least 100% of the estimated cost of constructing the Lessee's telecommunications facilities within the public ways of the City or upon City property shall be deposited in the event construction is commenced.

A. Except as provided below, the construction bond shall remain in force until 60 days after substantial completion of the work, as determined by the City, including restoration of public ways and other property affected by the construction.

B. The construction bond shall guarantee, to the satisfaction of the City:

- (1) Timely completion of construction;
- (2) Construction in compliance with applicable plans, permits, technical codes, and standards;
- (3) Proper location of the facilities as approved by the City;
- (4) Restoration of the public ways and other public or private property disrupted, damaged, or otherwise affected by the construction. The construction bond shall warrant said restoration work for a period of 1 year;
- (5) The submission of 'as-built' drawings after completion of the work as required by this Chapter; and
- (6) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

**32. ASSIGNMENTS OR TRANSFERS OF LEASE.** Ownership or control of a Lease may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Lessee, by operation of law or otherwise, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance and then only on such reasonable conditions as may be

prescribed therein. Notwithstanding the foregoing, Lessee may assign this Lease at any time to any of Lessee's partners or affiliates upon written notice to Lessor.

A. No Lease shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the Lease, unless otherwise provided.

B. The Lessee and the proposed assignee or transferee of the system shall provide and certify the following information to the City not less than sixty (60) days prior to the proposed date of transfer:

- (1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
- (2) All information required of a lease applicant pursuant to Section 4 with respect to the proposed transferee or assignee; and
- (3) Any other information reasonably required by the City.

C. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the telecommunications facility pursuant to this Lease.

D. Unless otherwise provided in this Lease, the Lessee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Lease. No approval shall be deemed approved until all such costs and expenses have been paid.

E. Any transfer or assignment of the lease, system, or integral part of a system without prior written approval of the City under this Section or pursuant to the Lease shall be void and is cause for revocation of the lease.

F. Lessee shall make no assignment or transfer of this Agreement without obtaining the written consent of Lessor, which consent shall not be unreasonably withheld.

**33. TRANSACTIONS AFFECTING CONTROL OF LEASE.** Any transactions which singularly or collectively result in a change of 50% or more of the ownership or working control of the Lessee, of the ownership or working control of the telecommunications facility, of the ownership or working control of affiliated entities having ownership or working control of the Lessee or of a telecommunications facility, or of control of the capacity or bandwidth of the Lessee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Section 32 hereof. The Lessee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Lessee's company. Every change, transfer, or acquisition of control of a

Lessee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution or other appropriate order denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Lease. Approval shall not be required for mortgaging purposes or if said transfer is from the Lessee to another person or entity controlling, controlled by, or under common control with the Lessee.

**34. REVOCATION OR TERMINATION OF LEASE.** The Lease granted by the City to use or occupy public ways of the City or City property may be terminated for the following reasons:

- A.** Lessee's construction or operation in the City or in the public ways of the City or upon City property without proper City authorization;
- B.** Lessee's construction or operation at an unauthorized location;
- C.** Unauthorized substantial transfer of control of the Lessee;
- D.** Unauthorized assignment of Lease;
- E.** Unauthorized sale, assignment or transfer of Lessee's Lease, assets, or a substantial interest therein;
- F.** Misrepresentation by or on behalf of the Lessee in any written statement upon which the City relies in making the decision to grant, review or amend said Lease;
- G.** Abandonment of telecommunications facilities in the public ways or upon City property;
- H.** Failure to relocate or remove facilities as required in this Lease;
- I.** Failure to pay taxes, compensation, fees or costs when and as due the City;
- J.** Insolvency or bankruptcy of the Lessee;
- K.** Failure to construct or operate in accordance with approved permits; and
- L.** Violation of any material provision or term of this lease.
- M.** The Federal Communications Commission or its successor entity determines that the telecommunications facilities installed on the Premises are hazardous to health or safety.

**35. NOTICE AND DUTY TO CURE.** In the event that either party is in violation of or defaults under the provisions of the Lease, the party in default shall be given written notice of the apparent violation, default or non-compliance, providing a short and concise statement of the nature and general facts of the violation, default or non-compliance, and providing a reasonable period of time not exceeding 60 days to cure the violation.

**36. STANDARDS FOR REVOCATION OR LESSER SANCTIONS.** If the City determines that a Lessee willfully violated or failed to comply with any of the provisions of this Lease after notice is given the Lessee by the City under the provisions of this Lease, then the Lessee shall forfeit all rights conferred hereunder and the Lease may be revoked or annulled by the City. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies and to recover damages and costs incurred by the City by reason of the Lessee's failure to comply.

**37. NOTICE OF ENTRY ON PRIVATE PROPERTY.** If directed by the City, at least 24 hours prior to entering private property or streets or public easements adjacent to or on such private property to perform permitted new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. The Lessee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices. Provided, however, that nothing in this Lease shall permit the Lessee to unlawfully enter or construct improvements upon the property or premises of another.

**38. SAFETY REQUIREMENTS.** The Lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of a Lease area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right to see that the telecommunications facility of the Lessee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with the Lessee, establish a reasonable time for the Lessee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from the Lessee.

**39. LIENS.** Lessee shall not permit any lien to be imposed upon the property of the City as a result of work done by or on behalf of user and shall indemnify and hold the City harmless against any and all expenses, including reasonable attorney's fees and court costs in connection with any such lien.

**40. MISCELLANEOUS.**

- A. This agreement shall be governed by the laws of the State of Washington.
- B. The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- C. Each party agrees to furnish the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.
- D. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Lease must be in writing and executed by both parties.
- E. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker.
- F. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- G. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, to the address of the respective parties set forth below:

**LESSOR:**

City of Shoreline  
Attn: Director, Parks, Recreation and Cultural Services  
17544 Midvale Avenue North  
Shoreline, WA 98133-4921

**Lessee:**

Cingular Wireless Lease Administration  
6100 Atlantic Boulevard  
1<sup>st</sup> Floor  
MailCode: GAN02  
Norcross, GA 30071

**with a copy to:**

Counsel – West Region  
Cingular Wireless  
3345 Michelson Drive  
Suite 100  
Irvine, CA 92612

**and with a copy to:**

Cingular Wireless  
2445 – 140<sup>th</sup> Avenue NE  
Suite 202  
Bellevue, WA 98005  
Attn: Property Manager

The individuals identified in this paragraph shall be the specific point of contact for each party regarding all topics. Any change to this point of contact shall be delivered to the other party in writing by certified or registered mail, return receipt requested.

41. **ENVIRONMENTAL**. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease. Lessee may conduct soils testing on the Premises.

42. **NONDISCRIMINATION**. Lessee shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status or disability, except employment actions based on a bona fide occupational qualification.

**LESSEE:**

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

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

\_\_\_\_\_  
E. Don MacLeod  
Executive Director of Network Services

**CITY OF SHORELINE**

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

\_\_\_\_\_  
STEVEN C. BURKETT, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
IAN R. SIEVERS, City Attorney

STATE OF WASHINGTON                    )  
  )  
COUNTY OF KING                        )                    SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, personally appeared E. Don MacLeod to me known to be the Executive Director of Network Services of New Cingular Wireless PCS, LLC, a Delaware limited liability company, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
  )       ss.  
COUNTY OF KING                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared Steven C. Burkett to me known to be the City Manager of the City of Shoreline, a municipal corporation, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

That portion of the Southeast quarter of the Northwest quarter of Section 16, Township 26 North, Range 4 East, W.M., described as follows:

Beginning at the concrete monument set for the center of said Section 16;

THENCE North 0°35'03" East along the North-South center line of said Section, 772.23 feet to a point thereon which is South 0°35'03" West 553.42 feet from the Northeast corner of said Southeast quarter of the Northwest quarter of Section 16, and the True Point of Beginning;

THENCE North 87°51'27" West 984.38 feet;

THENCE North 20°08'23" East 276.31 feet;

THENCE North 11°46'33" East 294.29 feet to a point on the North line of the Southeast quarter of the Northwest quarter of Section 16;

THENCE South 87°52'40" East 834.73 feet to the Northeast corner of said Southeast quarter of the Northwest quarter;

THENCE South 0°35'03" West 553.42 feet to the true point of beginning.



**Return to:**

c/o Cingular Wireless LLC

Attn: Network Real Estate Administration

Re: Cell Site # WA295-02; Cell Site Name: Hamlin Park Rd

6100 Atlantic Boulevard

Norcross, GA 30071

**MEMORANDUM OF LEASE**

Grantor: City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington

Grantee: New Cingular Wireless PCS, LLC, a Delaware limited liability company

Legal Description: Pctn SE 1/4, NW 1/4 S16-T26N-R4E

(see Exhibit 1 for full legal description)

Assessor's Tax Parcel ID #: 1626049083

Cell Site #: WA295-02

Cell Site Name: Hamlin Park Rd

State: Washington

County: King

This Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington, whose address is 17544 Midvale Ave. N. Shoreline, WA 98133-4921 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Option and Lease Agreement ("**Agreement**") on the \_\_\_\_ day of \_\_\_\_\_, 2005, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The initial lease term will be five (5) years ("**Initial Term**") commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option, with two (2) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of

the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

**"LANDLORD"**

City of Shoreline, a municipal corporation duly organized and existing under the laws of the State of Washington,

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


Print Name: Steven C. Burkett

Its: City Manager

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

**"TENANT"**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

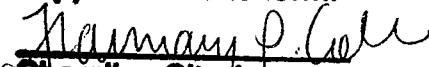
By:  \_\_\_\_\_

Print Name: E. Don MacLeod

Its: Executive Director of Network Services

Date: 5/31/05

**Approved as to form:**

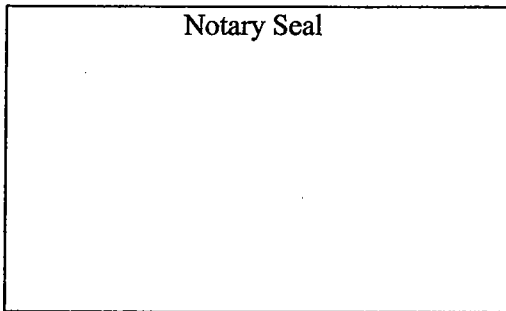
  
**Shoreline City Attorney**

**LANDLORD ACKNOWLEDGMENT**

STATE OF WASHINGTON     )  
  )     SS.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that STEVEN C. BURKETT is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the City of Shoreline to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

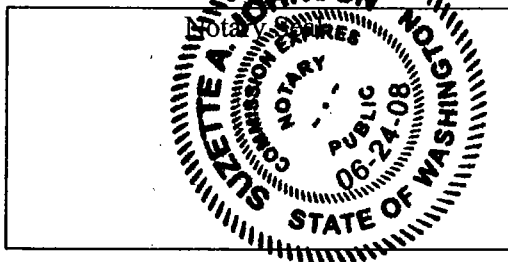
\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: \_\_\_\_\_

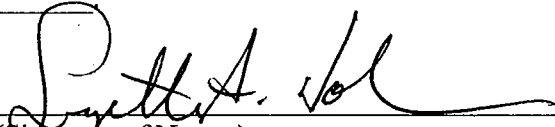
**TENANT ACKNOWLEDGEMENT**

STATE OF WASHINGTON     )  
  )     SS.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that E. Don MacLeod is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Network Services of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_



  
\_\_\_\_\_  
(Signature of Notary)

Suzette A. Johnson  
\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: 6/24/08

## EXHIBIT 1

### DESCRIPTION OF PREMISES

Page 1 of 1

to the Memorandum of Lease dated \_\_\_\_\_, 2005, by and between Sunshine Holdings, LLC, a Washington limited liability company, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

Landlord owns certain property with an address of 3036 Bethel Road, Port Orchard, WA 98366 (assessor's parcel number 4625-000-007-0208) hereinafter identified as the "Property."

Tenant leases a portion of the Property identified as the "Premises." The Premises are described and/or depicted as follows:

That portion of the Southeast quarter of the Northwest quarter of Section 16, Township 26 North, Range 4 East, W.M., described as follows:

Beginning at the concrete monument set for the center of said Section 16;

THENCE North 0°35'03" East along the North-South center line of said Section, 772.23 feet to a point thereon which is South 0°35'03" West 553.42 feet from the Northeast corner of said Southeast quarter of the Northwest quarter of Section 16, and the True Point of Beginning;

THENCE North 87°51'27" West 984.38 feet;

THENCE North 20°08'23" East 276.31 feet;

THENCE North 11°46'33" East 294.29 feet to a point on the North line of the Southeast quarter of the Northwest quarter of Section 16,

THENCE South 87°52'40" East 834.73 feet to the Northeast corner of said Southeast quarter of the Northwest quarter;

THENCE South 0°35'03" West 553.42 feet to the true point of beginning.