



Agenda Item Executive Summary

Item Name AT&T License Agreement at Schick Water Tower Committee or Board Board

BUDGET IMPACT

Amount: +\$3,000/month

Budgeted

NA

List what fund

Water Fund

EXECUTIVE SUMMARY

New Cingular Wireless (AT&T) has approached the Village to install cellular equipment at the Schick water tower. We currently have a T-Mobile license agreement on this tower. The agreement includes a monthly license fee of \$3,000.00 for the first five year term. The agreement includes six additional five year terms for a total of 35 years.

The Village Attorney and I have negotiated and reviewed this agreement with AT&T and believe this agreement is consistent with the existing agreements we currently have.

ATTACHMENTS (PLEASE LIST)

Memo, Resolution, License Agreement w/ Exhibits A, B, C, and D

ACTION REQUESTED

- For Discussion Only
- Resolution
- Ordinance
- Motion:

MOTION: I move to approve Resolution 2023-_____, a resolution approving of the non-exclusive license agreement between the Village of Bartlett and New Cingular Wireless PCS, LLC.

Staff: Dan Dinges, Director of Public Works

Date: 09/26/23

PUBLIC WORKS MEMO



DATE: September 26, 2023

TO: Paula Schumacher
Village Administrator

FROM: Dan Dinges, PE
Director of Public Works

SUBJECT: AT&T License Agreement at Schick Water Tower

New Cingular Wireless (AT&T) has approached the village to install cellular equipment at the Schick water tower. We currently have a T-Mobile license agreement on this tower. The agreement includes a monthly license fee of \$3,000.00 for the first five-year term. The agreement includes six additional five-year terms for a total of 35 years.

The village attorney and I have negotiated and reviewed this agreement with AT&T and believe this agreement is consistent with the existing agreements we currently have.

MOTION: I move to approve Resolution 2023-_____, a resolution approving of the non-exclusive license agreement between the Village of Bartlett and New Cingular Wireless PCS, LLC.

RESOLUTION 2023 - _____

**A RESOLUTION APPROVING OF THE NON-EXCLUSIVE
LICENSE AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND
NEW CINGULAR WIRELESS PCS, LLC**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The Non-Exclusive License Agreement dated October 3, 2023, between the Village of Bartlett and New Cingular Wireless PCS, LLC (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED:

APPROVED:

Kevin Wallace, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2023 - _____ enacted on October 3, 2023 and approved on October 3, 2023, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

NON-EXCLUSIVE LICENSE AGREEMENT

This Agreement (herein so called) is dated as of the latter of the signature dates below (the "Effective Date") by and between the VILLAGE OF BARTLETT, an Illinois home rule municipal corporation (the "Village" or "Licensor") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Licensee") (collectively, the "Parties").

RECITALS

WHEREAS, the Village is the owner of certain real estate commonly known as the Schick Road Avenue Water Tower Property, located at 401 Schick Road, Bartlett, Illinois, which is legally described on Exhibit A (the "Water Tower Property"), improved with a water storage tank structure (the "Tower"); and

WHEREAS, Licensee desires to obtain a license to utilize a portion of the Water Tower Property for the purpose of the construction, operation and maintenance of radio communications facilities near the base of the Tower, and to install and operate certain transmit and receive antennas attached to certain portions of the exterior of the Tower as provided for herein; and

WHEREAS, Licensee also desires a license for ingress and egress and a construction license for constructing, installing, removing, repairing, relocating, replacing, maintaining or operating improvements pursuant to this Agreement; and a utility license to be used for the purpose of the construction, installation, removal, repair, relocation, replacement, maintenance and operation of electrical, telephone and other communications facilities and transmission lines as may be required in connection with the transmission and distribution of electricity, telephone and other communications, and sounds and signals;

NOW, THEREFORE, in consideration of the terms, conditions and license fees hereinafter set forth and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. a. The Village hereby grants a non-exclusive license to the Licensee for the Term as hereinafter defined in section 3 of this Agreement to utilize a 12 foot by 27 foot portion of the Water Tower Property near the base of the Tower, as legally described on the land survey with sheet titled "Plat of Survey" prepared by ASM Consultants, Inc. dated March 9, 2023 as the "Licensed Site" attached hereto as Exhibit B and depicted on the OVERALL SITE PLAN as the 12' x 27' Licensed Site area lying southwest of the Tower for the purpose of installing, maintaining, operating and replacing its radio communications facilities, and to construct a walk in cabinet structure and diesel generator as described in section 1.c. herein and depicted and described on the preliminary engineering plans, last revised March 6, 2023, prepared by Apex Engineering, Inc., copies of which are attached hereto as Exhibit C and incorporated herein (the "Engineering Plans"), together with a non-exclusive

access license for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, to and from the Schick Road public right-of-way as legally described on the Plat of Survey attached as Exhibit B under the heading and as depicted thereon as the "Access and Utility Easement", and together with an eight (8) foot wide non-exclusive utility license area for the installation and maintenance of underground utility wires, cables, conduits, and pipes, subject to the terms and conditions herein, legally described on the Plat of Survey attached hereto as Exhibit B. The areas depicted on the Engineering Plans as the Utility License and the Access License are collectively referred to herein as the "Utility and Access License Areas". The Village grants an additional non-exclusive license to the Licensee to utilize space on the Tower as described and depicted on the Engineering Plans as further described herein in Exhibit C. The Licensed Site, the Access License, the Utility License and the Tower License are hereinafter collectively referred to as the "Licensed Premises." As used herein, "Facilities" include the equipment cabinet, Antennas, mounting brackets, utility lines, the Interior Cabling (both within the 12' x 27' Licensed Site and under the Utility License), electronic equipment, and support structures thereto. This license shall also run to the Licensee's employees, contractors, its contractor's subcontractors, consultants and agents acting on its behalf (collectively, the "Licensee's Agents") to install, construct, maintain and replace as authorized by the terms of this Agreement.

b. Licensee shall have access to the Licensed Site seven (7) days a week, twenty-four (24) hours a day. Notwithstanding the foregoing, Licensee shall reasonably notify the Village Public Works Department at 630-837-0811 in the event that Licensee requires access to the Water Tower during the hours of 8:00 a.m. to 4:30 p.m. Monday through Friday ("Business Hours"). In the event Licensee requires access to the Water Tower outside of Business Hours, on weekends, holidays or in the event of an emergency, Licensee shall contact the Village Director of Public Works, Dan Dinges, at 630-837-0811 in order to gain access to the Water Tower. Any and all construction work, including major repair, replacement or removal work shall be performed only between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and 8:00 a.m. and 9:00 p.m. on Saturdays and Sundays.

c. Licensee is hereby permitted to construct and install an equipment cabinet and diesel generator within a fenced area on the Licensed Site having external dimensions of approximately 12' in width by 25' in depth (the "Equipment Cabinet") in accordance with the final engineering plans approved by the Village Engineer, the Village Building Director and the Village Public Works Director (the "Final Engineering Plans"). Licensee is hereby permitted to install and affix certain equipment on the Tower as further described in Exhibit C and constructed and installed in strict accordance with the Final Engineering Plans and Village Public Works Director (the "Mounting Frames and Antennas"). Notwithstanding any provision in this Agreement to the contrary, Licensee shall install, maintain, operate, repair and replace the Mounting Frames and Antennas and other Facilities so as not to cause unreasonable interference with any pre-existing licensee's operations including but not limited to those of T-Mobile Central LLC ("T-Mobile") mounted on the top of the Tower and shall hold harmless, defend, and indemnify the Village for such interference as provided for in section 24.d. herein. Licensee acknowledges receipt

of the license agreement, site plan and the engineering plans relative to T-Mobile's approved communications facilities. Licensee undertakes full and complete responsibility at all times hereafter for the expenses of, and quality of, construction, installation and compliance of Licensee's Facilities with all applicable federal, state and local laws, regulations and codes, code requirements and regulations of governmental authorities having jurisdiction over the construction and installation, including, but not limited to, compliance with acts affecting construction of public buildings and service areas used by public employees, and Licensee agrees to remedy or correct any deficiencies with such compliance. The construction shall be processed pursuant to permit and conducted by authorized and licensed personnel and shall be performed in compliance with local, state, and federal requirements for construction activities upon public property. Licensee shall be responsible for all permit costs. Prior to the issuance of building permits, Licensee shall maintain and provide the Village with evidence of each of the insurance coverages specified herein in the amounts so specified.

2. a. Provided Licensee is not in default under this Agreement beyond any period allowed hereby for cure, Licensee shall have the right, during the Term to conduct tests and to install, maintain, operate, replace or remove any of its Facilities in or upon the Licensed Premises (as defined in section 1 above) all of which shall belong to and be removable by Licensee in accordance with section 9 of this Agreement. The Village agrees that Licensee shall have access to the Licensed Premises per section 1.b of this Agreement in order to conduct tests and to install, maintain, operate, replace or remove the Facilities pursuant to the Access License and subject to any conditions contained in this Agreement.

b. Prior to commencing construction and/or location of Facilities, including the construction of the Equipment Cabinet and the installation of the Antennas, Licensee shall submit to the Village a complete set of Licensee's engineering plans for construction on the site. Prior to affixing the Mounting Frames and Antennas, Licensee shall furnish the Village with a report from a licensed structural engineer in which said engineer opines that the Tower is structurally sound and will support the Mounting Frames and Antennas as designed under extreme weather conditions, including that they will withstand winds in excess of 75 mph. The Village shall review such plans within thirty (30) days of receipt of a complete set of said plans. If (i) the plans comply with all applicable federal, state and local codes, rules and regulations, including but not limited to the Bartlett Building Code, in which various national and electric codes are adopted, including the National Electric Safety Code and the National Electric Code (2017 edition) and the International Building Code (2018 edition) as the same may be amended from time to time, (ii) the Bartlett Building Division Manager determines that said proposed Facilities will not endanger any person or property, (iii) the Village Engineer determines that the proposed Facilities will not affect the structural integrity of the Tower, and (iv) the Village Public Works Director determines that the Facilities will not unreasonably interfere with the Village's current and/or future operations at the site, and/or with the operations and/or use of the Water Tower Property by the Village or any of the Village's licensees, lessees, invitees, or other permitted users, including but not limited to T-Mobile, then the Village shall promptly issue a building permit. Prior to

the receipt of such building permit, Licensee and its contractors, subcontractors and agents shall not begin construction on the Licensed Premises. The revised Engineering Plans to be approved by the Village Building Director, Village Engineer and Village Public Works Director are hereinafter referred to as the "Final Engineering Plans". Licensee shall cause all work performed hereunder and all equipment, materials, and goods installed and/or constructed hereunder to be in strict accordance with the Final Engineering Plans.

c. Notwithstanding any other provision of this Agreement to the contrary, Licensee shall not make any alterations, additions, installations, substitutes or improvements excluding routine maintenance and like-for-like replacements that are of substantially the same size, weight, and number of antennas and substantially the same mounting systems (hereinafter collectively called "Alterations"), which the Village has not approved pursuant to section 2.b. above, in and to the Licensed Premises and/or Utility and Access License Areas without first obtaining the Village's written consent. The Village shall not unreasonably withhold, condition or delay its consent; provided, Licensee shall have submitted new engineering plans and structural engineer's reports if the Alterations increase the number of antennas or the weight of any such antenna increases by more than ten (10) pounds or the mounting system or type will substantially change. However, the Village shall have no obligation to consent to Alterations that in the Village Engineer's reasonable opinion fail to comply with the requirements of section 2.b. above, or do not clearly evidence the increase or decrease in weight of the replacement and additional antennas or changes to the mounting system or types and the weight thereof. Licensee shall pay the Village's actual and reasonable costs not to exceed \$1,000.00 for reviewing or inspecting any proposed Alterations.

d. All work shall be done at reasonable times in compliance with hours allowed for construction under the Bartlett Building Code in a "first class" workmanlike manner, by contractors approved by the Village, according to the Final Engineering Plans approved by the Village, which consent shall not be unreasonably withheld or delayed. All work shall be done in compliance with all applicable laws, regulations and rules of any government agency with jurisdiction, and with all regulations of the Board of Fire Underwriters, Factory Mutual Engineering, or any other similar insurance body or bodies. Licensee shall be solely responsible for the effect of the Facilities and/or any Alterations on the Tower's structure or systems, notwithstanding that the Village has consented to the work, and shall reimburse the Village within forty-five (45) days after receipt of an invoice for any actual and reasonable costs incurred by the Village by reason of any faulty work or damage to the Tower caused by Licensee or its contractors, or subcontractors, employees or agents, except to the extent that such damage may be due to or resulting from the negligence or willful misconduct of the Village. Upon completion of the Facilities, including any Alterations, Licensee shall provide the Village with a complete set of "as-built" plans.

e. The parties agree that Licensee shall complete the initial construction of its communications facility in accordance with the Final Engineering Plans on or before the date that is twenty-four (24) months after the Village notifies

the Licensee that the Water Tower painting is complete and construction shall commence("Construction Completion Date").

f. Licensee shall keep the Licensed Premises and Access and Utility License Areas and Licensee's license interest herein free of any liens or claims of liens, and shall discharge any such liens within sixty days after notice from Licensor thereof. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the Village harmless from and against any and all liens or claims for liens for material or labor by reason of any work done and/or material furnished by or to Licensee in connection with any construction, installation, maintenance, repair, Restoration Work, as defined herein, or other work undertaken at any time by Licensee or on behalf of Licensee, its consultants, contractors, subcontractors, and/or agents in or upon the Licensed Premises and/or Access and Utility License Areas. Prior to the commencement of any work, including the installation of any Antennas, Cabinets, or other Facilities, Licensee shall furnish the Village with a performance bond, labor and material payment bond in the amount of \$100,000.00 and in the form attached hereto as Exhibit D, co-signed by a surety licensed by the Illinois Department of Insurance to sell and issue sureties in the State of Illinois and having a policy rating of at least A- and a financial rating of at least VIII in the latest edition of the A.M. Best's Insurance Guide to guaranty the performance of Licensee's obligations hereunder, including but not limited to completion of construction by the Construction Completion Date, payment of all construction, installation, and replacement costs, license fees, taxes, completion of removal and restoration work by the Restoration Completion Date, and payment of the Restoration Work costs, if any, as required under section 9 herein (the "Bond").

g. Licensee shall not conduct tests, install, maintain, operate, replace or remove any Facilities so as to disrupt, disturb or otherwise interfere with the activities of the Village without first obtaining the prior written permission of the Village, such permission not to be unreasonably withheld, conditioned or delayed.

3. a. The initial term (the " Initial Term") of this Agreement shall be five (5) years, and shall commence upon the Effective Date and shall terminate on the fifth (5th) anniversary of the Effective Date, and provided that Licensee is not then in default under this Agreement beyond any period allowed hereby for cure. THEREAFTER, THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SIX (6) ADDITIONAL TERMS OF FIVE (5) YEARS EACH (THE "RENEWAL TERMS") AT THE MONTHLY LICENSE FEES DESCRIBED IN SECTION 3.b. HEREIN, UNLESS LICENSEE SHALL GIVE THE VILLAGE WRITTEN NOTICE AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF THE THEN CURRENT FIVE YEAR TERM OR RENEWAL TERM OF LICENSEE'S INTENTION NOT TO RENEW AND FURTHER PROVIDED THAT LICENSEE IS NOT IN BREACH OR DEFAULT HEREUNDER AT THE TIME OF THE RENEWAL AND THAT THIS AGREEMENT HAS NOT BEEN EARLIER TERMINATED. During the Initial Term and Renewal Terms of this Agreement, Licensee may terminate the Agreement only in accordance with the provisions of section 6, section 16, or section 29. The word "Term" as used herein shall be deemed to include not only the Initial Term but the

Renewal Terms as well, as and when the Renewal Terms commence unless sooner terminated under the terms hereof.

b. (1) Commencing the first day of the month following the date that the Licensee commences construction on the Water Tower Property and installs its antennas (the "Licensee Commencement Date") and on the first day of each month thereafter during the Initial Term, Licensee shall pay the Village a license fee in equal monthly installments of Three Thousand Dollars (\$3,000.00). A license fee for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. The license fee shall be payable to the Village at 228 South Main Street, Bartlett, Illinois, 60103, Attention: Village Treasurer. The parties acknowledge and agree that the initial payment of the monthly license fee will be sent by Licensee within forty-five (45) days after the Licensee Commencement Date.

(2) Upon the commencement of each Renewal Term, the monthly license fee will increase by fifteen percent (15%) over the monthly license fee paid during the previous five (5) year term.

(3) The Village hereby agrees to provide to Licensee certain documentation (the "License Fee Documentation") evidencing Village's interest in, and right to receive payments under, this Agreement, specifically meaning that documentation necessary for Licensee to comply with tax and information return reporting rules of the Internal Revenue Service ("IRS") or state and local governments, including without limitation, IRS form W-9 and applicable state withholding forms, in a form reasonably acceptable to Licensee.

(4) As additional license fees, Licensee shall make a one-time payment to the Village as an economic incentive to induce the Village to enter this Non-Exclusive License Agreement with Licensee in the amount of Twenty Thousand and 00/100 dollars (\$20,000.00) ("One-Time Payment") payable within forty-five (45) days after Licensee installs the antennas on the Tower.

4. Licensee shall pay the entire cost of any utility service utilized by Licensee. Licensee will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Licensee on the Premises. In the event that the Licensee is unable to obtain separate electrical utilities, Licensee may terminate this Agreement.

5. The Utility License and Access License shall automatically terminate one hundred twenty (120) days after the termination or expiration of the other license(s) granted in section 1.a. herein to the License Premises.

6. It is understood and agreed that Licensee's ability to use the Licensed Premises and the effectiveness of this Agreement is contingent upon Licensee's obtaining after the full execution of this Agreement any and all certificates, permits and other approvals that may be required by any federal, state or local governmental authorities and all electric and telephone utility connections to Licensee's Facilities that may be required for operation of the Facilities (collectively, the "Approvals"). In

the event Licensee is unable to obtain said Approvals, this Agreement shall be rendered null and void with no further duty or obligation upon either party by virtue hereof except for Licensee's obligation to reimburse the Village for all of its expenses, including its attorney's fees in drafting this Agreement and the Village's consultant fees, including engineering fees to review all plans, drawings and specifications submitted or by or on behalf of Licensee, provided that such shall not exceed five thousand dollars (\$5,000.00) and shall be paid by Licensee within thirty days (30) after receipt of an invoice for the same from the Village.

7. The Village represents to Licensee that the Village has the authority to grant the license and rights being provided to Licensee under this Agreement. The Village acknowledges that Licensee is relying upon the foregoing representation in entering this Agreement and expending monies in connection therewith. Notwithstanding the foregoing, in the event the use of the Licensed Premises and/or Utility and Access License Areas is prevented by law, ordinance, government regulation, injunction or court order, Licensee's sole and exclusive remedy shall be limited to the termination of this Agreement, and in such event, the Village shall not be liable for any damages incurred by Licensee as a result of the termination of this Agreement as to the Licensed Premises and/or Utility and Access License Areas except to the extent that such termination is due to Village's failure to comply with any such law, ordinance, governmental regulation, injunction or court order. Licensee represents to the Village that it has the full right to enter into and perform this Agreement and to install, operate and maintain the Facilities and that the operation and maintenance of the Facilities shall not infringe on the legal rights of any other licensed telecommunications providers.

8. (a) Licensee agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the communication facilities or Licensee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensor, its employees, invitees, agents or independent contractors.

(b) Licensor agrees to indemnify, defend and hold Licensee harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Licensor, its employees, invitees, agents or independent contractors, or Licensor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensee, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 8 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such

claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

9. Within ninety (90) days after the expiration or termination of this Agreement ("Restoration Completion Date"), Licensee shall remove all of its Facilities from the Licensed Premises and Utility and Access License Areas and restore the Licensed Premises and Utility and Access License Areas to, and yield up the Licensed Premises, the Tower, and Utility and Access License Areas in at least as good a condition as existed prior to the Commencement Date, ordinary wear and tear excepted, including but not limited to the removal of the Facilities, including but not limited to, the cabinets, concrete pad, mounting frames and/or brackets, antennas, conduit, fiber, cables, wiring, fences, pads, cabinets, transformers, and above-ground utility lines (the "Restoration Work").

10. Except to the extent of the Village's obligation pursuant to this Agreement, Licensee shall keep the Licensed Premises and Utility and Access License Areas in and repair in accordance with and shall otherwise comply in all respects with any and all applicable state, federal and municipal laws. Licensor will maintain and repair the Property in good and condition, subject to reasonable wear and tear and damage from the elements..

11. In the event the site or a portion of the site on which the Licensed Premises and/or Utility and Access License Areas are located is sold, leased or otherwise conveyed by the Village, or in the event the Village determines that the Licensed Premises and/or Utility and Access License Areas should be used by the Village or a third party with the permission of the Village for purposes inconsistent with the continued use of the Licensed Premises and/or Utility and Access License Areas as a location for the installation, operation, maintenance and repair of the Facilities, the Village, after the Initial Term, may require Licensee to relocate the Facilities at the Village's cost, to another location designated by the Village, provided that Licensee shall not be required to relocate the Facilities to such alternate site unless such alternate site is acceptable to Licensee in its reasonable discretion. If the Village and Licensee cannot agree on an alternative site, then this Agreement shall terminate and in such event the parties shall have no further liability therefor. The Village shall give Licensee not less than one hundred eighty (180) days written notice before Licensee can be required to relocate the Facilities pursuant to this section. Provided Licensee waits to mount its antennas until after the Village paints the Tower in the Spring of 2023 or the Fall of 2024, in which event Licensee's license fees shall not yet commence, the Village agrees not to require Licensee to relocate the Facilities to an alternative site pursuant to this section until at least ten (10) years after the Commencement Date. Notwithstanding the provisions of this section 11, the Village may not require Licensee to relocate its Facilities in order for the Village to

lease or grant a license to another cellular provider for use of the Tower, the Water Tower Property, the Licensed Premises and/or Utility and Access License Areas.

12. Licensee shall maintain such insurance on the Facilities covering the loss or damage to the Facilities as it may deem reasonable and necessary. The Village shall have no liability for damage, loss or destruction to the Facilities, unless such damage, loss or destruction is due to an intentional, willful or reckless act of the Village.

13. Licensee may not assign or otherwise transfer all or any part of its interest in this Agreement or in the Licensed Premises and/or Utility and Access License Areas without the prior written consent of the Village, which the Village may withhold in its sole discretion; provided, however, that Licensee may assign all (but not a part of) its interest to its parent company, any subsidiary or affiliate or to any successor in interest or entity acquiring fifty-one per cent (51%) or more of its stock or assets of Licensee in the market as defined by the Federal Communications Commission in which the Property is located ("Assignee"), provided that any such assignment shall be subject to all the terms and conditions of this Agreement and any such assignee shall assume all of Licensee's obligations under this Agreement. The Village may assign and/or transfer its title in interest in this Agreement upon written notice to Licensee, subject to the assignee and/or the transferee assuming all of the Village's obligations herein. Notwithstanding the foregoing, any such assignment that requires any Alterations to and/or change in use or additional use, including but not limited to, installation of additional antennas and/or operating at a different frequency by any such parent, subsidiary and/or affiliate may be subject to additional license fees to be paid to the Village, as reasonably agreed between such Assignee and the Village.

14. The Village waives any lien rights it may have concerning the Facilities which are deemed Licensee's personal property and not fixtures, and Licensee has the right to remove the same at any time without the Village's consent, provided that such personal property can be removed without damage to the Tower and/or to the Water Tower Property, and Licensee shall remain liable for the Restoration Work and payment of all license fees required herein.

15. a. If (1) Licensee shall be in default of the payment of the License Fee, and such default shall continue for thirty (30) days after written notice thereof is given to Licensee, or (2) Licensee shall default in the performance of any other of Licensee's material obligations contained in this Agreement and such default shall continue for thirty (30) days after written notice thereof is given to Licensee, then, in addition to any other remedies which may be available to the Village at law or in equity, upon five (5) days prior written notice to Licensee, the Village may, if the Village so elects, terminate this Agreement. No such failure, however, will be deemed to exist if Licensee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensee.

b. In the event that the Village shall be in default of the performance of any of its material obligations under this Agreement, and such default or action shall continue in effect for thirty (30) days after written notice thereof is received by the Village, then in addition to any other remedies at law or inequity which may be available to Licensee, Licensee may, upon five (5) days prior written notice to the Village, if it so elects, terminate this Agreement. No such failure, however, will be deemed to exist if Village has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Village. The termination of this Agreement shall not relieve Licensee of its obligations to restore the Tower and the Water Tower Property, or preclude the Village from exercising its rights and drawing upon the Performance Bond – Labor and Material Payment Bond.

c. A party may terminate this Agreement by giving written notice to the other party (1) if bankruptcy, composition, reorganization, insolvency or liquidation proceedings are instituted by or against the other party and such proceedings are not dismissed within sixty (60) days after the date they were instituted, (2) if the other party makes an assignment for the benefit of creditors, or (3) if a trustee, receiver or similar officer of any court is appointed for the other party, whether with or without the consent of the other party.

16. Licensee shall conduct its operations at the Licensed Premises including the Utility and Access License Areas, and the Tower, and control its agents, employees, consultants, contractors, subcontractors, and invitees in such a manner so as not to create any nuisance or interfere with, or disturb any use of the Water Tower Property by the Village or any other licensee, lessee, permitted user, occupant or invitee of the Village, including but not limited to T-Mobile, who Licensee acknowledges has existing antennas on the Tower and equipment and appurtenances on the Water Tower Property. Licensee shall comply with any and all applicable federal, state and local laws, rules, regulations and ordinances, including those of the Village pertaining to the Licensed Premises including the Utility and Access License Areas, and the Tower as adopted from time to time.

17. a. Licensee shall not cause or permit any Hazardous Substances to be brought upon, kept, stored or used in or about the Licensed Premises, Utility and Access License Areas and/or Water Tower Property, by Licensee, except that Licensee shall be permitted to use batteries for emergency power, petroleum for backup generator fuel, and other materials necessary for the installation and normal operation of Licensee's Facilities. If the presence of Hazardous Substances and petroleum brought upon, kept, stored or used in or about the Licensed Premises, Utility and Access License Areas, and/or Water Tower Property by Licensee, its officers, employees, agents, or independent contractors, in violation of this section, and/or said batteries used for emergency power, or other materials necessary for the installation and normal operation of the Licensee Facilities, result in contamination of the Licensed Premises, Utility and Access License Areas, Water Tower Property and/or other property owned, leased or controlled by the Village, Licensee shall pay for all actual costs of clean up and shall indemnify, hold harmless

and at the Village's option, defend the Village, and its employees, affiliates, agents, volunteers, officers, and officials from and against any and all claims, demands, expenses (including actual and reasonable attorneys' fees), costs, fines, penalties and other liabilities of any and every kind and nature, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substances on or about the Licensed Premises, Utility and Access License Areas, or other property owned, leased or controlled by the Village, but only to the extent due to Licensee's fault or the fault of any of Licensee's officers, employees, agents, contractors or subcontractors; provided, however, that this indemnification shall not apply to the extent the Village causes any such environmental occurrence.

For purposes hereof, Hazardous Substances shall include, but not be limited to, substances defined as "hazardous substances", "toxic substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended ("RCRA"); those substances defined as "hazardous substances", "materials", or "wastes" under any Federal law or the law of the state in which the Premises are located; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws (collectively, "Environmental Laws"). If Licensee's activities or the activities of any of Licensee's officers, employees, agents, contractors, or subcontractors, violate any Environmental Laws, Licensee shall cease such activities immediately upon notice from the Village. Licensee shall immediately notify the Village both by telephone and in writing of any spill or unauthorized discharge of Hazardous Substances or of any condition constituting an "imminent hazard" under any Environmental Laws.

Licensee represents, to the best of its knowledge, to the Village that Licensee's use of the Licensed Premises and/or Utility and Access License Areas does not require Licensee to obtain any permits or licenses from any governmental body responsible for monitoring or otherwise overseeing compliance with Environmental Laws. Petroleum storage and use for back-up generator power, if utilized, shall be permitted by the Illinois Office of the State Fire Marshall (OSFM), as applicable. Licensee shall obtain any required OSFM permits prior to bringing any petroleum on the Water Tower Property. Licensee further covenants to the Village that if any such permits or licenses for Licensee's Permitted Uses are required in the future, Licensee shall notify the Village immediately, obtain such permit or license within such time limits allowed by law, and provide the Village with copies of the same within five (5) days of receipt of issuance.

b. The Village represents that, to the best of its actual knowledge and after reasonable investigation, it has not caused any Hazardous Substances to be brought upon, kept, stored or used in or about the Licensed Premises and/or Utility and Access License Areas. If the presence of Hazardous Substances existing prior to this Agreement on the Licensed Premises and/or Utility and Access License Areas, which were brought upon, kept, stored or used in or about the said property

by the Village, its employees, agents, contractors, or subcontractors, acting on behalf of and at the direction of the Village in violation of this section results in contamination of the Licensed Premises and/or the Utility and Access License Areas, the Village shall pay for all actual costs of clean up and shall indemnify, hold harmless and at Licensee's option, defend Licensee and its employees, affiliates and agents from and against any and all claims, demands, expenses, costs, fines, penalties and other liabilities, including, but not limited to, costs and expenses incurred in connection with any clean-up, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any such Hazardous Substances on or about the Licensed Premises and/or Utility and Access License Areas due to the Village's fault or the fault of the Village's employees, agents, contractors, or subcontractors, acting on behalf of and at the direction of the Village; provided, however, that this indemnification shall not apply to the extent Licensee, or any of its employees, agents, contractors, subcontractors, lessees or licensees cause or contribute to any such environmental occurrence.

For purposes hereof, Hazardous Substances shall include, but not be limited to, substances defined as "hazardous substances", "toxic substances" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended ("RCRA"); those substances defined as "hazardous substances", "materials", or "wastes" under any Federal law or the law of the state in which the Premises are located; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws (collectively, "Environmental Laws").

The Village represents, to the best of its actual knowledge, to Licensee that the Village's use of the Tower does not require the Village to obtain any permits or licenses from any governmental body responsible for monitoring or otherwise overseeing compliance with Environmental Laws. The Village further represents that if any such permits or licenses for the Village are required in the future, the Village shall notify Licensee immediately, obtain such permit or license within such time limits allowed by law, and provides Licensee with copies of the same within five (5) days of receipt of issuance.

18. Licensee shall carry and maintain for the duration of this Agreement and any extensions or renewals thereof, insurance against claims for bodily injuries to persons or damages to property which may arise from or in connection with Licensee's operation and use of the Licensed Premises including the Facilities, Utility and Access License Areas, and/or the Tower, and/or installation, construction, alterations, and/or removal of the Facilities. The cost of such insurance shall be borne by Licensee, and shall be in the following coverages and amounts (the "Insurance Requirements"):

a. Commercial General Liability Coverage per ISO form CG 00 01 or its equivalent covering Licensee and including the Village and its officers, officials, employees, volunteers, and assigns, as additional insureds by endorsement as respects to this Agreement as their interest may appear (the "Additional Insured") as

respects liability caused, in whole or in part, by the Licensed Premises including the Utility and Access License Areas, the Tower, the Facilities, and/or the Alterations, including premises, operations, independent contractors, products, completed operations, personal injury, advertising, injury and contractual liability, and/or caused, in whole or in part, by activities performed by Licensee or its employees. Licensee agrees that in the event any of its authorized agents, contractors or subcontractors should: a) cease operation; b) exhaust its insurance limits due to previous claim payments; or c) have its insurance policies cancelled by its insurer, Licensee will assume that agent, contractor or subcontractor's responsibility for outstanding insurance claims arising out of activities performed by such agent, contractor or subcontractor on the Licensed Premises Said insurance coverage shall contain no special limitations on the scope of coverage afforded Additional Insured. Said insurance coverage shall be primary and non-contributory with any insurance or program of self-insurance that may be maintained by the Village, except for claims attributable to the sole negligence, willful/wanton, or intentional misconduct of the Village, its officials, or employees, as respects the Village, its officers, officials, employees, volunteers and agents. Any insurance or self-insurance maintained by the Village, its officers, officials, employees, volunteers and agents shall be in excess of Licensee's insurance and shall not contribute with it. Licensee shall maintain limits of \$3,000,000 combined single limit for any one occurrence for bodily injury, personal and advertising injury and property damage and \$5,000,000 general aggregate. Licensee shall also furnish the Village with a copy of the "Blanket Additional Insured Endorsement" including the Village, its officials, officers, employees, volunteers, and assigns as an additional insured as respects to this Agreement. The required insurance shall be from any insurance company or companies licensed, authorized or permitted to do business in Illinois with a policy holder's rating of at least an "A-" and a financial rating of at least "VII" in the latest edition of the A.M. Best Insurance Guide.

b. Worker's Compensation and Employers' Liability: Workers compensation limits as required by statute and Employers' Liability limits of \$1,000,000 each accident; \$1,000,000 per disease-each employee; \$1,000,000 disease policy limit.

c. Commercial Automobile Liability: Licensee shall maintain commercial auto liability insurance with a combined single limit of \$1,000,000 each accident covering all owned, hired and non-owned autos.

d. Licensee shall, prior to the Commencement Date and prior to the installation of any of its Facilities, and from time to time at the Village's request during the Term, furnish to the Village certificates evidencing such coverage. Upon receipt of notice of cancellation from its insurer, Licensee shall provide the Village with thirty (30) days prior written notice of such cancellation of any required coverage that is not replaced.

e. Under no circumstances shall the Village be deemed to have waived any of the insurance requirements of this Agreement by any action or omission, including, but not limited to (1) allowing any work to commence by or on

behalf of the Licensee before the Village is in receipt of certificates of insurance, (2) failing to review any certificates of insurance received, or (3) failing to advise Licensee that any certificate of insurance fails to contain all the required insurance provisions, or may be deficient in any other manner. Licensee agrees that the obligation to provide the insurance required under this Agreement is solely its responsibility and that it is a requirement which cannot be waived by any action, inaction or omission by the Village.

f. Any contractor or subcontractor of Licensee performing any work and/or Alteration upon the Water Tower Property, including but not limited to any construction, installation, improvements, maintenance, repairs, alteration, and/or removal and/or replacement of any Facilities ("Licensee's Agents") shall similarly maintain at their sole cost substantially the same insurance with substantially the same limits as required of Licensee including but not limited to furnishing the Village with the Additional Insured Endorsements required pursuant to section 18.a. above.

g. Notwithstanding any provision herein to the contrary, in the event Licensee and/or Licensee's Agents fail to maintain the Insurance Requirements, the licenses granted herein shall be immediately suspended until Licensee and Licensee's Agents comply with the Insurance Requirements and furnish documentation to the Village evidencing such compliance.

h. The Village reserves the right to reasonably amend the types and amounts of coverages required herein every ten (10) years based on recommendations from the Village's then existing risk management agency or other insurance provider but only to the extent that it is required of similar operations of the Village and with sixty (60) days advance written notice to Licensee.

19. Licensee shall not use or permit the Licensed Premises and/or Utility and Access License Areas to be used in any manner which would render the insurance thereon void or the insurance risks more hazardous; provided, however, that if Licensee's use of the Licensed Premises, the Utility and Access Areas and/or the Tower does make the insurance risks more hazardous, then without prejudice to any other remedy of the Village for such breach, Licensee shall pay to the Village on demand the amount by which the Village's insurance premiums are increased as a result of such use immediately following receipt of documentation from the Village evidencing said increase in insurance premiums. Licensee shall not use or occupy the Licensed Premises, the Utility and Access License Areas and/or the Tower, or permit the Licensed Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would cause structural injury to the Tower or other Village property or cause injury to person(s) or which would constitute a public or private nuisance or waste.

20. In any case where the approval or consent of the Village is required, requested or otherwise to be given under this Agreement, such approval or consent shall be given in writing by the Village Administrator, and Licensee may rely upon any such written approval or consent. In any case where the approval or consent of

a party is required under this Agreement, the party shall not unreasonably delay, condition or withhold its approval or consent.

21. The parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between the parties. The parties shall each be solely responsible for the conduct of their respective officers, employees and agents in connection with the performance of their obligations hereunder.

22. The Village represents to Licensee that to the best of its actual knowledge the Tower currently complies with all marking and lighting requirements of the Federal Aviation Administration and FCC. The Village agrees to correct any deficiencies of such current requirements if cited by either agency. If either agency requires different or additional markings or lighting because of AT&T Mobility's use of the Tower, such compliance shall be at the sole expense of AT&T Mobility.

23. Licensee acknowledges that the Licensed Premises, Utility and Access License Areas and Water Tower Property are currently exempt from all taxes, including, but not limited to, real estate taxes. In the event, however, (a) this License Agreement or the rights granted under this Agreement results in the full or partial loss of such exemption, or (b) the Licensed Premises, Utility and Access License Areas and/or the non-licensed portion of the Water Tower Property become subject to the assessment of real estate taxes and/or a tax on the leasehold and/or license interest granted as a result of this Agreement and/or Licensee's use and/or operations of the Licensed Premises and/or the Utility and Access License Areas, then Licensee agrees to pay the Village the amount of any such tax within thirty (30) days after receipt of an invoice therefore, but reserves the right to appeal such assessment, prior to the due date therefor for each tax year this Agreement remains in effect, including any and all extensions. In the event other non-municipal users including but not limited to T-Mobile install equipment on the premises resulting in any such tax assessment, the amount of any such tax shall be prorated between such users. Licensee shall also pay any and all taxes on personal property and any sales, use, occupation, or similar taxes attributable to Licensee's use and/or operation of the Facilities, Licensed Premises, and/or Utility and Access License Areas.

24. a. Licensee shall operate the Licensed Premises and Utility and Access License Areas and the Facilities in a manner that will not cause interference to the Village and other existing licensees of the site, including but not limited to T-Mobile, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. All operations by Licensee shall be in compliance with all Federal Communications ("FCC") requirements, including the operation of all equipment.

b. Subsequent to the installation of the Facilities, the Village shall not permit itself, its lessees or licensees to install new equipment on the Tower, and the Utility and Access License Areas, or any of said areas, if such equipment is likely

to cause interference with Licensee's operations. Such interference shall be deemed a material breach by the Village. In the event interference occurs, the Village agrees to take all reasonable steps necessary to eliminate such interference within twenty-four (24) hours of notice of the interference. In the event any such interference described above does not cease within the aforementioned cure period, Licenser shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Notwithstanding the above, the Village shall have the right to install equipment that is in compliance with all FCC standards and regulations. The Village shall not be liable for any interference caused by T-Mobile, including that caused by any new or modified equipment that T-Mobile installs in accordance with its rights to alter, maintain, modify, repair or replace its existing equipment under the T-Mobile License. The parties agree that Licensee's remedies for such interference shall include, but are not limited to, specific performance and/or injunctive relief in order to enforce the provisions of this section.

c. Should the Village claim interference due to Licensee' Facilities, Licensee shall cooperate with the Village and, if applicable T-Mobile to determine whether or not Licensee' Facilities and/or operations are the source of such claimed interference. Such cooperation shall include, but not be limited to, intermodulation studies. Should it be determined by such studies that such interference is directly attributable to the operations of Licensee's Facilities, Licensee, at its sole cost and expense, shall take all reasonable measures to modify the Facilities in order to eliminate such interference.

d. Licensee understands that the Village has granted a non-exclusive license to T-Mobile for use of space on the Tower and near the base of the Tower for the installation, maintenance, operation, and replacement of T-Mobile's radio communication facilities pursuant to a Non-Exclusive License Agreement between the Village and T-Mobile, a copy of which has been furnished to Licensee and which is referred to herein as the "T-Mobile License". Operation and/or use of the Licensed Premises, Utility and Access License Areas, and/or Facilities by Licensee which causes unreasonable interference with T-Mobile's operations which Licensee fails to promptly eliminate, shall be a material breach of this Agreement. Licensee, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the Village, and its officials, officers, employees, agents, invitees, licensees, lessees, and contractors from and against any claim, cost, action, liability or damage of any kind arising from (i) Licensee's use and/or operation of the Licensed Premises, Utility and Access License Areas, and/or Facilities and/or acts and/or omissions of or on behalf of Licensee, its employees, contractors, subcontractors, or agents, which causes interference with T-Mobile's operations; and or (ii) otherwise causes the Village to be in breach or default of its License Agreement with T-Mobile, except to the extent such claim, cost, action, liability or damage may be caused by the negligence or willful misconduct of the Village its officials, officers, employees, agents, invitees, licensees, lessees, and contractors. The parties agree that the Village's remedies shall include, but are not limited to, specific performance and/or injunctive relief in order to enforce the provisions of this section.

25. If either party hereto defaults in the performance of any obligations hereunder and such default continues beyond the applicable cure period, the non-defaulting party, after providing written notice to the defaulting party in accordance with section 29, may perform such obligation on the defaulting party's behalf. The non-defaulting party shall make reasonable efforts to have said work performed in the presence of the defaulting party. In so doing, the non-defaulting party may, but shall not be required to, make any payment of money or perform any other act. All actual and reasonable sums paid by the non-defaulting party, and all incidental costs and expenses, shall be due and owing from the defaulting party to the non-defaulting party within thirty (30) days after receipt of an invoice therefore, together with interest from the date of demand to the date of payment at the rate of 10% per annum or the highest rate permitted by applicable law. Notwithstanding the above, the non-defaulting party shall allow the defaulting party thirty (30) days to perform said obligation(s) prior to having said work performed on its behalf, unless the performance of said work is necessary to protect the health and/or safety of person(s) and/or to avoid damage to property, in which case the non-defaulting party may perform or cause to be performed such work immediately, and shall provide notice to the defaulting party as provided above to the extent practical under the circumstances.

26. If either party institutes any action to enforce the provisions of this Agreement or to seek a declaration of rights hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs as part of any award.

a. The parties acknowledge and agree that the Village intends to paint the tower during the period expected to begin on April 1, 2024 and end on July 1, 2024. Upon the Commencement Date and prior to April 1, 2024, provided that all necessary permits and approvals have been received, Licensee shall be permitted to weld its antenna mounts to the Tower (but not install its antennas), install its equipment shelter, install underground conduit and cables, and install its improvements within the Utility Areas. Other than as set forth in this Section 27, Licensee agrees not to commence work to install any antennas on the Tower until after the Village has completed painting the Tower. The parties further acknowledge and agree that effective as of the Commencement Date, Licensee will be permitted to collocate and operate its communications equipment ("Temporary Equipment") on a temporary tower ("Temporary Tower") to be located on the Water Tower Property. Licensee acknowledges and agrees that its right to install and operate the Temporary Equipment on the Temporary Tower is contingent upon Licensee's shared use of the Temporary Tower with T-Mobile and execution of a collocation agreement by and between Licensee and T-Mobile. Licensee shall also be permitted to install all necessary cables and conduits to run between its equipment shelter and the Temporary Tower, all as substantially described in the attached Exhibit C. Upon the Village's completion of the Tower painting work, Village shall provide written notice of the same to Licensee, and thereafter Licensee shall have a period of twenty-four months (24) months in which to complete its initial installation on the Tower as depicted in Exhibit C. The parties further acknowledge and agree that Licensee shall not be required to remove its equipment from the Temporary Tower until its

equipment is installed, integrated and fully operational on the Tower to Licensee's reasonable satisfaction.

b. Notwithstanding the provisions of section 27.b or any other provision to the contrary herein, in the event the Village determines that it is in its best interests to raze the Tower, to re-paint the Tower, or otherwise perform repairs or maintenance work on the Tower, the Village shall give Licensee 180 days prior written notice to Licensee of its intention to raze the Tower or perform such other maintenance work, in which event Licensee shall remove its personal property from the Tower and the Village shall permit Licensee use of temporary cellular facilities including a cellular-on-wheels facility, direct-bury monopole, ballast tower or similar installation at Licensee's sole cost and expense, during the time it takes for the Village to complete the painting, repair or maintenance work to the Tower, upon the Water Tower Property if feasible; otherwise, provided that the location for such temporary facility is reasonably acceptable to Licensee, and subject to the approval of the Village Engineer and the Director of Public Works. Within ninety (90) days after notice from the Village of completion of said painting, repair or maintenance work, Licensee may remount and reconnect the Antennas that were temporarily removed from the Tower in the same location, all at the Licensees sole cost, except that during the time of such temporary relocation no monthly license fee shall be due from Licensee. The Village agrees that after the Commencement Date, it will not repaint the Tower more than once every 10 years during the term or any extended term of this Agreement.

27. This Agreement may be terminated without further liability as follows: (i) in accordance with sections 6 and/or 16 of this Agreement; or (ii) by Licensee for any reason or for no reason, provided Licensee delivers written notice of early termination to the Village no later than thirty (30) days prior to the Commencement Date; or (iii) by Licensee at any time to be effective as of the next annual anniversary of the Commencement Date provided Licensee delivers written notice of early termination to the Village at least nine (9) months prior to the end of the then current license year; or (iv) by Licensee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of the Facilities, provided that Licensee shall use its best efforts to obtain and maintain said licenses, permits and other necessary approvals; or (iv) by Licensee if Licensee is unable to occupy and utilize the Licensed Premises due to an action of the FCC, including, without limitation, a take back of channels or change in frequencies. Nothing in this section shall be construed as relieving Licensee of its obligation to perform the Restoration Work in accordance with section 9 of this Agreement.

28. a. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed served:

(1) When delivered by overnight courier to that party's address set forth below during the hours of 9:00 a.m. and 5:00 p.m. local time Monday through Friday excluding federal holidays; or

(2) When mailed to any other person designated by that party in writing herein to receive such notice, via certified mail, return receipt requested, postage prepaid.

b. Notice shall be given to the following:

If to Licensee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
RE: Cell Site #: IL0700
Cell Site Name: Bartlett WT (IL)
Fixed Asset # 12564820
1025 Lenox Park Blvd NE, Third Floor
Atlanta, GA 30319

With a required copy to: New Cingular Wireless PCS, LLC
Attn: Legal Dept. – Network Operations
RE: Cell Site #: IL0700
Cell Site Name: Bartlett WT (IL)
Fixed Asset # 12564820
208 South Akard Street
Dallas, TX, 75202-4206

If to the Village: Village of Bartlett
228 South Main Street
Bartlett, Illinois, 60103
Attn: Village Administrator

With required copy to: Ancel Glink, P.C.
140 S. Dearborn,
Chicago, IL 60603
Attn: Kurt S. Asprooth

c. Either party hereto may change the place or notice to it by sending written notice to the other party.

29. Notwithstanding any other provision of this Agreement, any license, privilege, or right to occupy any public way within the corporate limits of the Village is non-exclusive.

30. Within thirty (30) days after completion of the construction of the Facilities, Licensee shall test the radio frequency (“RF”) emissions and the electromagnetic field (“EMF”) emissions to determine whether the RF and/or EMF emissions exceed any federal, state, and/or local limits and/or standards relative to same (“Allowable Emissions”). Licensee shall furnish said test results to Licensor documenting the Facilities in compliance with the Allowable Emissions. In the event, the RF and/or EMF omissions exceed the applicable Allowable Emissions, Licensee, at its sole cost, shall cause the Facilities to comply with the Allowable Emissions and shall furnish additional test results to Licensor documenting the

Facilities in compliance with the Allowable Emissions within forty-five (45) days of the construction of the Facilities (the "Emissions Reduction Work").

31. Compliance with Law. All goods, equipment, and all labor furnished relative to the Facilities and/or Licensed Premises, including but limited to any and all Initial Construction, maintenance, operations, use, repairs and/or Alterations shall comply with all applicable Federal, State and local laws, rules, and regulations relative thereto including, but not limited to, all regulations, rules and/or laws as required by the Federal Occupational Safety and Health Act (OSHA), the Illinois Department of Labor (IDOL), the U.S. Department of Labor (USDOL), EEOC, FCC, the Illinois Department of Human Rights, and/or the Human Rights Commission and all applicable Village of Bartlett Ordinances and Codes including but not limited to the Village of Bartlett Building Codes and Zoning Ordinances (collectively, the "Laws"). In the event of any conflicting Laws, the most stringent Law shall apply. To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless the Village, its officials, officers, employees, and volunteers from loss or damage, including, but not limited to, attorney's fees, and other costs of defense *by reason* of actual or alleged violations of any Laws or Law. This obligation shall survive the expiration and/or termination of this Agreement.

32. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party. Nothing in this Agreement, including but not limited to the provisions of sections 8 and/or 17, shall be construed and/or interpreted in any way as a waiver, express or implied, of any common law and/or statutory privileges and/or immunities of the Village, its officials, officers, employees, volunteers and/or agents, as to any claim, cause, and/or cause of action of any kind or nature whatsoever.

33. a. This Agreement supersedes all prior agreements and understandings, both written and oral, of the parties with respect to the subject matter hereof.

b. Changes in the number, gender and grammar of terms and phrases herein when necessary to conform this Agreement to the circumstances of the parties hereto shall in all cases, be assumed as though in each case fully expressed therein.

c. This Agreement shall be construed, governed and enforced according to the laws of the State of Illinois, and the venue for the enforcement of this Agreement and/or litigation between the parties shall be the Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois

d. In construing this License Agreement, section headings shall be disregarded.

e. Any recitals herein are hereby incorporated into this Agreement by reference.

f. The following exhibits are attached hereto and incorporated herein and made a part hereof:

- i. Exhibit A - Legal Description of Schick Road Water Tower Property
- ii. Exhibit B - Land Survey
- iii. Exhibit C – Preliminary Engineering Plans
- iv. Exhibit D – Form of Performance Bond – Labor and Material Payment Bond

g. The parties acknowledge that this Agreement was freely negotiated by both parties, each of whom was represented by counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against either party.

h. Each of the undersigned signing as an officer or agent on behalf of the respective party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement and that he or she does so voluntarily and in his or her official capacity.

i. If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

[Signatures Appear on Following Page]

Market: IL/WI
Cell Site Name: Bartlett Water Tower
Cell Site No.: IL0700
FA#: 12564820

LICENSEE:

NEW CINGULAR WIRELESS PCS, LLC
a Delaware limited liability company
By: AT&T Mobility Corporation
Its: General Manager

By: _____
Printed Name: _____
Its: _____

Dated: _____

LICENSOR:

VILLAGE OF BARTLETT

By: _____
Kevin Wallace
Village President

ATTEST:

Lorna Giles, Village Clerk

Dated: _____