



PORTLAND PARKS  
& RECREATION

**PERMIT OF ENTRY FOR PARK PROPERTY – PERMIT # \_\_\_\_\_**

This Permit of Entry (Permit) is entered into by and between The City of Portland (City), a municipality of the State of Oregon, through its Bureau of Parks and Recreation (Parks or PPR) and New Cingular Wireless PCS, LLC a Delaware limited liability company, having a mailing address of 12555 Cingular way, Suite 1300, Alpharetta, GA 30004 (Permittee).

**Recitals:**

The City is the owner of certain real property known Munger Park (Park) located within Multnomah County, State of Oregon.

Permittee has a lease with Oregon Department of Transportation for installation and maintenance of a cell site on State land known as Lot 1, Block 65 of Carter's Addition.

In order to power that site, Permittee has located its underground utilities on the adjacent Park property, described as Tax Lot 3300 in Lot 1, Block 65 of Carter's Addition, since 1992 as described in Exhibit A "Premises".

Permittee's use was originally authorized by a Revocable Permit, authorized by City Council Ordinance 165872, which has expired. Permittee now requires a new permit.

Nominal annual rents were required in the past, without considering that the ability to locate underground utilities on the Park property contributes a significant value to the Permittee's telecommunication facility at this location.

**Agreed:**

- 1) **Grant of Permit of Entry.** Permittee is hereby granted a Non-exclusive Permit to enter the Park for the purposes described in Section 4 of this Permit. Permittee's underground utilities are located at 1746 SW Ford Street in a 2 foot wide trench that crosses approximately 180 feet of Park, and is illustrated on Attachment A hereto ("Premises").
- 2) **Term.** The term of this permit is five (5) years, retroactive to May 1, 2009 (Effective Date) and terminating on April 30, 2014. Permittee may renew this Permit for one additional five year term so long as Permittee is not in default at the time of renewal.
- 3) **Acceptance of Premises.** Permittee has examined the Premises and accepts them in an "as is" condition. City or its officers, agents or employees have made no representations or warranties, express or implied, as to the condition of the Premises. City shall have no liability to Permittee for any damage or injury caused by the condition of the Premises. Furthermore, Permittee accepts the Premises subject to any and all valid rights or interests, including, but not limited to: rights of access by the public; existing permits; licenses; leases; easements; franchise agreements; railroad facilities; pipelines, telephone, telegraph, communication, power and signal lines; or any similar facilities, together with any future installations thereof.

- 4) **Scope of Work or Use.** Permittee is authorized to continue to locate its existing underground utilities on the Premises and conduct routine maintenance of such improvements. This Permit does not authorize any new uses, including but not limited to replacement of conduit or other materials. All work associated with the project will be conducted in a first class professional manner with the highest and best work and safety standards and practices. Parks will be provided at least forty-eight (48) hours notice before entering the Premises for significant repair or maintenance purposes.

If deemed necessary by PPR, specific project plans will be attached to this Permit and, if attached, will be considered incorporated into the Permit by reference. The scope of work or use defined herein or attached constitutes the entirety of the expected use or scope of work. No changes to the scope of work or use are authorized without the prior written approval of PPR.

Permittee shall fully pay for all materials joined or affixed to and labor performed upon the Premises, and shall pay all taxes, charges for public utilities, and other assessments that arise out of rights granted herein.

- 5) **Rent.** Permittee will pay Parks an annual fee of \$9,000.00 that will be adjusted annually by 3.5%. Rent shall be due upon execution and, thereafter, on each anniversary of the Effective Date. Rent shall be paid without invoice from Parks and without deduction or offset. In addition to any other remedies available at law, if any rent or other charge required by this Permit is not received within 10 days after it is due, Parks may impose a late charge equal to five percent (5%) of the amount of the delinquent rent or charge. Failure to impose a late charge on one occasion does not effect a waiver of Parks' right to impose a late charge on subsequent delinquent payments.
- 6) **As-Builts.** Permittee shall keep accurate maps and records, including the approved as-built construction plans and specifications of its facilities and improvements located in the Park. As-built specifications are included as Exhibit B
- 7) **Locates.** Permittee shall not begin any excavation or other subsurface activity in the Park without first contacting the One-Call Locates number and shall explicitly indicate the property is owned/managed by City of Portland, Parks & Recreation. One-Call Locates phone number is: 1-800-332-2344. Permittee shall also contact Mike VanYserloo, Parks Locates, at (503) 823-1600 at least 72 hours before commencing excavation or other subsurface activities on the Park.
- 8) **Trees and Urban Forestry.** For projects where there are potential tree impacts either above or below ground, Permittee shall include Dave Kahler from Urban Forestry in the Pre-Construction meeting and any other meetings. Mr. Kahler can be reached at (503) 823-1691 or by cell at (503) 823-8194. Permittee shall strictly manage construction limits to ensure the minimum disruption to existing vegetation.
- 9) **Equipment and/or Materials to be used on site.** Permittee assumes all risk for any damage to their equipment while working under the authority of this Permit. Permittee shall keep all equipment within the confined work zone. All vehicles brought into the Park must be marked as corporate vehicles belonging to the Permittee, or its subcontractors, if any. Personal vehicles belonging to Permittee's employees shall not be parked in the Park.
- 10) **Maintenance, Repair and Restoration.** Permittee, at its cost, shall maintain the Premises in a neat condition, free of trash and debris, in good and substantial condition, order and repair. Permittee shall repair, at its cost and with the prior written approval of Parks, any damage to the Park or surrounding City of Portland property caused by the work project and/or their entry or occupancy of the Park under this Permit. Restoration shall be made to conditions equal to or better than those pre-existing the

Permittee's work. PP&R, at its sole discretion, may elect to complete necessary repairs. Permittee agrees to pay reasonable costs of repairs performed by the City.

- 11) **Security.** Permittee is responsible for providing, to Parks' satisfaction, signage, coning, and/or fencing to keep people away from equipment and work areas and to warn Park users of any hazards. Permittee shall give Parks prompt notice of any condition, disturbance, accident or occurrence on the Park related to their use or occupancy of the Park which might create a hazard to users of the Park property.
- 12) **Indemnification.** Permittee shall indemnify and hold harmless the City and Portland Parks & Recreation, their officers, directors, agents and employees from any and all liability, damages, expenses, attorneys fees, causes of action, suits, claims or judgments, arising out of or connected with (i) Permittee's entry, use or occupancy of the Park, (ii) any failure of Permittee to comply with the terms of this Permit of Entry or any violation of law or ordinance, and (iii) the acts or omissions of Permittee, its officers, directors, agents and employees or invitees; provided, however, the Permittee shall not be liable for claims caused by the sole negligence of the City, its officers, directors, agents and employees. Permittee shall, at its own cost and expense, defend any and all suits which may be brought against Permittee or City, their officers, directors, agents and employees, either alone or in conjunction with others upon any such above mentioned cause or claim, and shall satisfy, pay, and discharge any and all judgments; including attorney fees and costs, that may be recovered against City or Permittee, their officers, directors, agents and employees in any such action or actions, including any appeals, in which they may be party defendants.

City, its officers, directors, agents and employees shall not be liable for any damage to equipment or any other property of Permittee or to any person in or upon the Park including but not limited to damage by fire, explosion, electricity, flooding, vandalism, water or rain, or any other cause whatsoever unless caused by or due to the sole negligence of City, its officers, directors, agents and employees.

City or its officers, directors, agents and employees shall not be liable for any latent defect at the Park. In addition to the indemnity provided above, Permittee agrees to indemnify, defend and hold harmless City, its officers, directors, agents and employees from and against all damages, costs, liabilities, and expenses caused by, arising out of, or in connection with, the handling, storage, discharge, transportation or disposal of hazardous or toxic wastes or substances, pollutants, oils, materials or contaminants, as those terms are defined by federal, state or local law or regulation, as amended from time to time. Damages, costs, liabilities and expenses shall include any amounts claimed to be owed by any regulating and administering agency

Permittee, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons in, upon or about the Park from any cause other than the City's sole negligence, and Permittee waives all claims in respect thereof against City.

- 13) **Insurance.** Permittee, its contractors and subcontractors, shall maintain public liability and property damage insurance that protects the Permittee and the City and its officers, agents and employees from claims, demands, actions and suits for damage to property or personal injury, including death, arising from the Permittee' work under this Permit. The insurance shall provide coverage for not less than \$1,000,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence and in the aggregate. The insurance shall be without prejudice to coverage otherwise existing and shall include as additional insureds the City and its officers, agents and employees. Notwithstanding the inclusion of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or

amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

The insurance shall provide that the insurance shall not be canceled without insurers endeavoring to provide at least thirty (30) days written notice first being given to the Property Manager, Portland Parks and Recreation. If the insurance is canceled prior to completion of the Permit, the Permittee shall provide a new policy with the same terms. The Permittee shall maintain continuous, uninterrupted coverage for the duration of the Permit. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motorized vehicles by the Permittee.

Permittee shall maintain on file with the Property Manager, Parks and Recreation, a certificate of insurance certifying the coverage required under this Permit. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Permit by the City.

Permittee and all employers working under this Permit of Entry shall comply with Oregon's workers compensation law, Oregon Revised Statutes Chapter 656, that requires subject employers to provide workers' compensation coverage for all their subject workers. The Permittee shall maintain workers' compensation insurance coverage for the duration of this Permit. In the event the Permittee's workers compensation insurance coverage is due to expire during the term of this Permit, the Permittee shall timely renew their insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Permittee shall provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

Permittee shall require all contractors or subcontractors working pursuant to this Permit to meet the indemnification and insurance requirements of Sections 12 and 13 of this Permit. All required Certificates of Insurance are attached to this Permit.

- 14) **Hazardous Materials.** No materials shall be stored, used, manufactured or disposed of within the Park or the surrounding City property except in compliance with all federal, state and local laws, provided that in no case may there be stored, used, manufactured or disposed of within the Park or surrounding City property any hazardous substances, as defined by ORS 465.200 and implementing regulations of the State of Oregon Department of Environmental Quality or which constitute a public health hazard, as defined by rules of the Oregon State Health Division, and no condition shall be permitted within the Park or surrounding Park property which constitutes a health hazard, as defined by the rules of the Health Division.
- 15) **Compliance with Laws.** In connection with its activities under this Permit, Permittee shall comply with all applicable federal, state and local laws and regulations. Permittee shall correct at Permittee's own expense any failure of compliance created by the fault or use of Permittee or their agents, employees or invitees. Permittee is responsible for determining and acquiring all other permits, licenses and approvals that may be required for this project. This Permit does not bind the City to take any particular course of action in regard to adjudicating other permit applications which are necessary to make the intended use of the Premises.
- 16) **Notice.** All notices under this Permit shall be in writing and shall be deemed validly given if sent by first class or certified mail, nationally recognized courier or facsimile transmission, and shall be effective upon receipt. Notices should be addressed as follows:

To PARKS:City of Portland

Parks and Recreation – Property Manager  
1120 SW 5th Avenue, Room 1302  
Portland, OR 97204-1933

To PERMITTEE:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: PR73; Cell Site Name: Tunnel (OR)  
Fixed Asset No: (10094206)  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a required copy of the notice sent to the addresses above to AT&T Legal at:

If sent via certified or registered mail:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site #: PR73; Cell Site Name: Tunnel (OR)  
Fixed Asset No: (10094206)  
P O Box 97061  
Redmond, WA 98073-9761

If sent via nationally recognized overnight courier:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site #: PR73; Cell Site Name: Tunnel (OR)  
Fixed Asset No: (10094206)  
16331 NE 72nd Way  
Redmond, WA 98052-7827

17) **Entry by City.** Parks reserves the right to enter upon the Park for any purposes, including inspection. City inspections are for the sole benefit of the City and do not constitute or imply acceptance of any work as conforming with the requirements of this Permit. The presence or absence of a City inspector does not relieve Permittee from any requirement of this Permit, nor is the inspector authorized to change any term or requirement of this Permit without the written authorization of the Parks' Property Manager.

18) **City's Reserved Rights.** City reserves all rights not specifically granted to Permittee herein. Permittee's privileges issued under this Permit shall not limit the Parks' authority to grant additional rights, privileges or interests within the Premises. Should Parks grant additional rights, privileges or interests within the Premises to some other individual or entity, Parks will require any interference with Permittee's privileges to be minimized, and if damaged, will require that Permittee's improvements be restored, at no expense to Grantee, to as good or better condition as they were in before any permitted construction occurred.

19) **Oregon Law and Forum.** This Permit of Entry shall be governed by the laws of the State of Oregon. Any suit or action arising under this Permit shall occur, if in the state courts, in the Multnomah County

Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

- 20) **Revocable Permit.** This Permit is revocable by PPR at any time for any reason, including failure of Permittee to comply with the terms and conditions of this Permit. No expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against PPR or the City, or be held to give the Permittee any vested or other right. In the event that the Permit is revoked, PPR's obligation is limited to refund of prepaid use fees, if any, prorated for the remainder of the Permit term.
- 21) **Termination by Permittee.** Upon thirty (30) days written notice to PPR, Permittee may terminate this Permit if Permittee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the telecommunication facility as now or hereafter intended by Permittee; or if Permittee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- 22) **Waiver of Breach.** The waiver by the City of the breach of any condition, covenant, or agreement herein contained to be kept, observed and performed by the Permittee shall in no way impair the right of the City to avail itself of any subsequent breach thereof. No waiver is effective unless such waiver is in writing and signed by the waiving party.
- 23) **Performance Guarantee.** If required at the sole discretion of PPR, Permittee shall guarantee performance hereunder in one of the following forms as approved by the City Attorney: surety bond executed by a company authorized to transact business in the State of Oregon; irrevocable letter of credit; set-aside account; cash bond; or another form acceptable to the City Attorney. Permittee shall maintain said guarantee(s) in place throughout the term of the Permit, except that Permittee may reduce the penal amount of such guarantee(s) from time to time with the prior written consent of PPR Property Manager, which consent shall not unreasonably be withheld or denied. At no time during the term of the Permit shall the amount of the Guarantee(s) under this Section be reduced to below 20% of the original guarantee(s).
- 24) **Termination.** Upon termination of this Permit, Permittee shall, at Permittee's sole expense, remove its improvements from the Premises and restore the Premises to as good or better condition as they were in at the time of the improvements were installed and, if the Permittee fails to do so, Parks may do such work of removal and restoration at the cost and expense of the Permittee. In the event of the removal by Parks of the property of the Permittee and of the restoration of the Premises as herein provided, Parks shall in no manner be liable to the Permittee for any damage sustained by the Permittee for or on account thereof and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that Parks may have against the Permittee. Parks may, at its sole discretion, allow the improvements to remain on the Premises, in which event Permittee shall be deemed to have relinquished all right, title, and interest thereto and the improvements shall be and become the property of Parks.
- 25) **No Liens.** Permittee shall keep the Premises free from all liens, including mechanics liens, arising from any act or omission of Permittee or those claiming under Permittee. Permittee shall pay as due all claims for work done, for services rendered or material furnished to the Premises at its request. If Permittee fails to pay any claims or to discharge any lien, Landlord may discharge the lien and collect all costs of discharge, including its reasonable attorney's fees, as Additional Rent. Assessment of Additional Rent by Landlord shall not constitute a waiver of any right or remedy Landlord may have on account of Permittee's default. Permittee may withhold payment of any claim in connection with a good faith

dispute over the obligation to pay, so long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Permittee shall, within ten (10) days after notice of filing, provide Landlord with an executed copy of a discharge of the lien, or deposit with Landlord cash or a sufficient corporate surety bond or other security satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney's fees or other charges that could accrue as a result of any action arising from the lien. This Lease shall be subject and subordinate to such liens and encumbrances as are on or as Landlord may hereafter impose on the land and building, and Permittee shall upon request of Landlord, execute and deliver agreements of subordination consistent with this Section.

26) **Entire Agreement.** This Permit contains the entire agreement between PPR and the Permittee and supersedes all prior written or oral discussions or agreements.

27) **Illegality.** If any provision of this Permit is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Permit, and this Permit shall remain in full force and effect without such invalid, illegal, or unenforceable provision.

28) **Assignability.** This Permit is not assignable.

IN WITNESS WHEREOF, the parties have caused this Permit of Entry to be executed in triplicate on the dates shown below.

PERMITTEE: NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF PORTLAND, BUREAU OF PARKS AND RECREATION

\_\_\_\_\_  
Zari Santner  
Director of Parks and Recreation

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**  
*Anita Kung'u*  
**CITY ATTORNEY**  
Chief Deputy City Attorney  
**SUBJECT TO INSURANCE APPROVAL**

EXHIBIT A  
Premises



EXHIBIT B  
As-Builts