

**PORT OF VALDEZ
COMMUNICATIONS SITE AGREEMENT**

This COMMUNICATIONS SITE AGREEMENT ("Agreement") effective 1st day of October, 2020 is hereby entered into by and between the **CITY OF VALDEZ, ALASKA** ("City"), an Alaska municipal corporation, whose address is P.O. Box 307, Valdez, Alaska 99686 and New Cingular Wireless PCS, LLC, a Delaware limited liability company, whose address is 1025 Lenox Park Blvd. NE, Third Floor, Atlanta, GA 30319 ("User").

WITNESSETH:

WHEREAS, the City is owner of that certain parcel of real property that is located in the Valdez Recording District, Third Judicial District, State of Alaska ("Property"), described as follows:

Island F, a portion of ADL Nos. 201084 & 212412, also known as "Ammunition Island," referenced in Alaska Tidelands Survey 564, located in Township 8 South, Range 6 West, Copper River Meridian, Valdez Recording District, Third Judicial District, State of Alaska; and

Located upon that Property is the Valdez Container Terminal ("Terminal") including a certain grain handling facility with grain silos and an access tower upon which communications equipment may be placed ("Premises"); and

WHEREAS, User is engaged in the business of providing communication services in and around Valdez, Alaska, and desires to place certain equipment that is associated with the provision of communication services on and upon certain Terminal towers, and further, desires to make and place certain improvements to and upon the Property whose function is to be associated with the operation of such equipment; and

WHEREAS, the City seeks to facilitate the provision of improved and innovative communications within Valdez and specifically find that this Agreement conforms therewith.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the City and User as follows:

1. Use of Premises. The City grants User the right and privilege to use of the Premises as further defined in **Exhibit A** attached hereto.

User agrees to accept the premises AS IS, WHERE IS condition with all faults, and understands that the City makes no express or implied warranties, or representations that the Premises is fit for any particular purpose.

The City grants to User the right and privilege to come and be present upon and to make use of the Premises for the following purpose only:

To place, install, maintain and operate equipment associated with the provision of communications services within the City of Valdez and the surrounding vicinity. The equipment that User is permitted to place, install, operate, and maintain upon the Premises under this Agreement is depicted in **Exhibit B** attached hereto (“Equipment”) as is the permitted location and configuration of the Equipment.

User shall not commit or allow to be committed waste upon or to the Premises or Terminal or any public or private nuisance or other act or thing (including but not limited to noise or vibration) which disturbs City, any neighboring property owner or tenant.

Prior to the execution of this Agreement, User shall provide the City with a detailed description of the Equipment and drawings indicating the location and configuration of the Equipment on the Terminal and all ground Equipment including utilities and access.

2. Fees. User shall pay to the City, in exchange for the right and privilege to use the Premises as is permitted under this Agreement, and for the Term thereof, the sum of TWENTY THOUSAND DOLLARS and NO CENTS (\$20,000.00) per year (“Fee”). The Fee shall increase annually by THREE (3) PERCENT rounded to the nearest dollar unless otherwise adjusted by resolution of the Valdez City Council. Annual Fees for the term of this Agreement shall be:

2020 – \$5,041 (Pro-rated)
2021 – \$20,000
2022 – \$20,600
2023 – \$21,218
2024 – \$21,855
2025 – \$22,510

Fees for any period during the term hereof which is less than one year shall be prorated based on a three hundred sixty-five (365) day year.

These Fees shall be paid in advance in one annual payment on or before January 31, of each year. Fees shall be paid directly to the Port of Valdez, P.O. Box 787, Valdez, Alaska 99686. In the event the Agreement is terminated, Fees will be refunded on a prorated basis.

3. Term. This Agreement shall be for a term of FIVE (5) years, commencing on October 1, 2020 and terminating on December 31, 2025, unless this Agreement is terminated at some earlier date under the terms and conditions set out hereinafter.

4. Extended Term. User shall have the right to extend the Term of this Agreement for a period of FIVE (5) years if and insofar as User gives written notice to the City of an intention to exercise this option no later than THIRTY (30) days prior to the expiration of the Term and that, at such time, User is not in default in the performance of any of the terms and conditions of this Agreement or has failed to comply with any of the terms and conditions hereof beyond any applicable cure period. Two additional FIVE (5) year extensions may be granted by the City in its

discretion if User is in compliance with this Agreement at the time of the exercise of such extension. At each extension, the City may increase the use rate based upon the fair market rental value of the use by User.

5. Consent Required for Modifications. User shall not place or install any equipment, or make any alteration, addition, or improvement to any existing equipment previously placed or installed, or place or put any improvements on or to the Premises or Terminal, or commence any such undertaking without the prior written consent of the City after submitting a Modification Application Form attached as **Exhibit C** and a \$1,500 modification application fee. This fee shall be waived for the site modifications detailed in **Exhibit D**.

As a condition precedent to such consent, User shall deliver to the City written plans, drawings, and specifications for all such work and provide a third-party structural analysis of such modifications and/or improvements. The plans shall show the layout of all proposed buildings, modifications to existing buildings or structures, and all other modifications, dimensions and locations of utilities if modified, specific use of said improvements, and a schedule of the completion dates for such modifications and other improvements. It is not the intent of this paragraph to restrict or prevent any required maintenance. Such consent will not be unreasonably withheld by the City.

6. Interference with Terminal or City Operations. User shall not place, install, maintain, or operate any equipment on or come upon, occupy or use the Terminal or Premises so as to hamper the operation or use of the Terminal, cement powder storage and distribution facility, or any other facility or that interferes with or impairs any of the rights or benefits of the City. The use of the Terminal and Premises for purposes deemed of higher public benefit by the City takes precedent over any use by User. User shall not interfere with the Valdez Police Department or Valdez Fire Departments use of the Premises for communication purposes including the maintenance of two antennas located on the Terminal towers and a receiver box.

7. Multi-Use Facility. User recognizes that the Valdez Container Terminal (VCT) is a multi-use facility. There will be occasions when User's personnel may be restricted from access to the Terminal due to Coast Guard, Department of the Army, Department of Defense, or any other applicable regulations. In addition, the City may restrict access to the Terminal as required for Port operations or otherwise. Any business interruptions associated with the City restricting access or otherwise closing the Terminal shall create no financial obligation upon the City for any cost of such interruption to User operations.

8. Compliance with Government Regulations. User shall comply and assumes sole responsibility for compliance with any and all economic, operational, safety, and other requirements as are or may be imposed by federal, state, municipal, or other law or regulatory body, that apply or relate thereto pursuant to its involvement in the communications business generally or cellular communications specifically; User agrees to reimburse the City its entire costs, including but not limited to the amounts of fines or penalties and costs of counsel, arising from any assertion or finding of a lack of compliance with any aforesaid laws and/or regulations arising out of or with respect to User's operations of the equipment associated with this Agreement.

9. Access. User understands that the Terminal is located on a regulated facility as defined by the U.S. Coast Guard, Department of Homeland Security and agrees to comply with any and all regulations in 33 CFR, Chapter 1, Subchapter H, Part 105 – Maritime Security: Facilities.

User agrees to provide the Port office with a list of all employees or contractors needing access to the Terminal. All employees and contractors shall have a valid Transportation Worker Identification Credential ("TWIC") or be escorted by a valid TWIC holder that has been approved for access to the Terminal and contact the Port Office to register TWIC for facility access in advance of arrival on site. Employees and contractors requiring access to the Terminal must pay the gate registration fee under the Port of Valdez Terminal Tariff ("Tariff") in effect at the time of registration and will incur additional administration/maintenance charges under the Tariff when City assistance or escort is required to access the Terminal.

Only certified climbers, as required by 29 C.F.R 1926.503 and 29 C.F.R 1910.30, may climb the tower located at the Terminal. User shall ensure that any subcontractor hired for work that requires climbing the tower is covered by tower climbing insurance with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate.

10. Nuisance. User shall immediately remove from the Premises any of the following items of User's property which are determined to be abandoned: buildings, improvements, vehicles, equipment, machinery or fixtures. User shall not allow a public nuisance to exist or to be created or maintained on the Premises. If the City Manager or Port Director determines that User has failed to perform as required by this subsection, the City Manager or Port Director may direct User to secure a labor force to so perform at the sole expense of User and User shall do so immediately. If User fails to commence such performance within seventy-two hours after notice from the City Manager or Port Director, the City Manager or Port Director may arrange for such performance at the sole expense of User and User shall pay those expenses.

11. Indemnification. To the maximum extent permitted by law, User (Indemnitor) agrees to defend, indemnify, and hold harmless, the City, and the City's employees and contractors, (Indemnitees), against and from any and all claims in any way associated with conduct under, induced by, and/or enabled by, this Agreement, alleged to have arisen in whole or in part as a result of any conduct on the part of the Indemnitor and/or one or more of the Indemnitees, not including willful misconduct, negligence, or breach of Agreement obligations by Indemnitees.

12. Insurance Requirements. All insurance policies required to be maintained by User under this paragraph shall include the City, and its officers, employees and agents, as additional insureds by endorsement with respect to this agreement. User will provide at least thirty (30) days written notice to City, of cancellation or non-renewal of any required coverage that is not replaced, and certificates or copies of all such insurance policies shall be furnished to the City promptly upon request therefor. To the extent permitted by law, all policies shall contain a waiver of any subrogation rights any insurer might have against the City. Alternatively, User shall have the right to self-insure by submitting a signed copy of the letter of self-insurance attached hereto as Exhibit E. User shall maintain, at its own expense, insurance as follows:

General Commercial Liability: User shall Maintain a Commercial General Liability insurance policy based on form ISO CG 00 01 or equivalent covering the User and the City for claims for personal injury, bodily injury (including death) and property damage arising from any activity occurring as a result of this Agreement.

A. Limits:

1. \$1,000,000 Each occurrence
2. \$100,000 Damage to rented premises
3. \$1,000,000 Personal injury
4. \$3,000,000 General aggregate
5. \$3,000,000 Products and completed operations aggregate

B. Coverages:

1. The policy shall contain additional insured endorsement CG 20 10 and CG 20 37 or equivalent with respect to this Agreement.

Auto Liability: User shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired, and non-owned autos).

A. Limits:

1. \$1,000,000 Combined single limit for each accident.

B. Coverages:

1. Additional insured endorsement with respect to this Agreement
2. Waiver of subrogation
3. Contractual liability

Workers' Compensation: User shall maintain Workers' Compensation and Employer's Liability Insurance.

A. Limits:

1. Workers' compensation – statutory limit
2. Employer's liability:
 - \$1,000,000 bodily injury for each accident
 - \$1,000,000 bodily injury by disease for each employee
 - \$1,000,000 bodily injury disease aggregate

B. Coverages:

1. To the extent permitted by law, the policy shall provide for a waiver of subrogation as respects to the parties required to be included as additional insured under the User's Commercial General Liability policy.

Umbrella/Excess Liability: User shall maintain shall Maintain an Umbrella/Excess Liability insurance policy covering the User:

A. Limits:

1. \$5,000,000 per occurrence and in the aggregate.

B. User may use any combination of primary and excess insurance to meet the total limits required

Pollution legal liability self-insurance in the amount of \$1,000,000 per claim and in the aggregate covering third party claims for bodily injury, property damage or cleanup costs as required by law, where the pollution is caused during and by User's operations under this Agreement.

Alternatively, User shall have the right to self insure any of the required insurance under the same terms as required by this Agreement.

13. Termination. This Agreement may be terminated by the City should User's use interfere with the City's use of the Premises or Terminal for purposes deemed by the City as in the best interest of the public, by providing User with one hundred eighty (180) days prior written notice of termination. This Agreement may be terminated by the City upon User's failure to perform or comply with any of the conditions or obligations contained in this Agreement, which default is not cured within thirty (30) days of receipt of written notice of default; or the filing of a petition in bankruptcy or insolvency, or for reorganization or for the appointment of a receiver or trustee, by or against User; in such event, the City shall give User ten (10) days prior written notice of the termination and User shall have ninety (90) days to remove any of its equipment from the Terminal and Premises. This Agreement may be terminated by User upon thirty (30) days prior written notice of the termination and User shall then have ninety (90) days from the date of such notice to remove all of its equipment from the Terminal and Premises.

14. Radio Interference. At the City's request, User shall discontinue the use of the Terminal as a transmitting/receiver site should User's use interfere with any FCC licensed transmitter, receiver, or navigation aid until the cause of the interference is eliminated. Subsequent to the installation of the User Facilities, City will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by the City, if such modifications cause interference with User's operations. In the event interference occurs, City will endeavor to eliminate such interference in a reasonable time period.

15. Assignability/ Use by Other Parties. User shall not assign (by operation of law or otherwise) or transfer this Agreement or any interest therein without the prior written consent of the City. User may not allow other parties to utilize User's equipment installed on the Premises without the prior written consent from the City. Such consent by the City shall not be unreasonably withheld, conditioned or delayed. User shall immediately disclose any use of the Premises or User's equipment installed thereon by any party other than User. Failure to make such a disclosure will result in the imposition of a penalty in the amount of \$20,000 per year that User failed to make

such a disclosure. Execution of this Agreement by User shall serve as a certification by User that no other parties are utilizing User's equipment installed on the Premises as of the date of execution.

16. Non-exclusive Use. The use of the Terminal and Premises by User will not be an exclusive use and therefore others who request to use it for similar purposes may also be allowed to do so by the City.

17. Snow and Bird Waste Removal. User will be responsible for all snow and bird waste removal necessary for its use under this Agreement.

18. Utility Installation/Usage. User will be responsible for the cost of installation of and the utilization of electricity needed for its use. User may utilize, if feasible, the existing port master meter to access power to the site of User's facilities. The City will bill User for reimbursement for the cost of power plus \$0.025 per KWH and the cost of other utilities used by User under this Agreement. User is responsible for obtaining and maintaining a separate electricity meter for its use under this Agreement.

19. Removal of Equipment. Upon the expiration or termination of this Agreement, User, at its sole cost and expense, will be responsible for the removing all equipment installed on the Terminal and/or Premises and restoring the Terminal and/or Premises to its condition prior to installation of the equipment except for normal wear and tear. Failure to remove the Equipment and restore the Premises as required in this paragraph within NINETY (90) days of the expiration or termination of this Agreement will result in the Equipment being deemed abandoned

20. Environmental Laws.

- (a.) User represents, warrants, and agrees that it will conduct its activities on the Premises in compliance with all applicable Environmental Laws, and will keep the Premises free of Hazardous Substances, except for fuel for emergency generators. "Hazardous Substances" has the meaning set forth in 29 C.F.R. § 1910.120. The City represents, warrants, and agrees that it has in the past and will in the future conduct its activities on the Premises in compliance with all applicable Environmental Laws and that the Premises is free of Hazardous Substances as of the date of this Agreement.
- (b.) The City shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, caused by the City, that have occurred or which may occur on the Premises. User shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of Hazardous Substance, caused by the User, that have occurred or which may occur on the Premises.
- (c.) User agrees to defend, indemnify, and hold the City harmless from and against any and all claims, causes of action, demands, and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments, and

attorney's fees that the City may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment arising solely from User's activities on the Property.

- (d.) The City agrees to defend, indemnify and hold User harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees that User may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from the City's activities during this Agreement and from all activities on the Property prior to the commencement of this Agreement.
- (e.) The indemnifications in this section specifically include costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any governmental authority.

21. Waiver of the City's Lien. The City hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities of User or any portion thereof which shall be deemed personal property for the purposes of this Agreement, regardless of whether or not same is deemed real or personal property.

22. Notices. All notices hereunder must be in writing and shall be deemed validly given if hand delivered or sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service, addressed to the City or User at the addresses indicated below (or any other address that the Party to be notified may have designated to the sender by like notice). Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

USER

Name: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Address: 1025 Lenox Park Blvd. NE, Third Floor, Atlanta, GA 30319

With a required copy to:
New Cingular Wireless PCS, LLC
Attn: Legal Dept. – Network
208 S. Akard Street, Dallas, TX 75202

AT&T provides the following contacts for outages and maintenance:

Mobility Network Reliability Center (MNRC): 1-800-638-2822

Responsible for monitoring the network for alarms, conditions such as power failures that

may require special attention to avoid impact on the network's performance
Available 24 hours for site emergencies and/ or after hours.

For planned maintenance or repairs (i.e. roof maintenance, coating roof, etc.) near our antennas or within controlled areas please dial option 9 & option 3 for planned maintenance approval as far in advance as possible to gain approvals needed for planned maintenance.

Please note: the AT&T MNRC can only coordinate the turning down of AT&T transmitters; please coordinate with the owner of any non-AT&T telecommunications facilities on site with their respective owners.

AT&T Lease & Billing contacts:

Tower Asset Group,

email address: RELeaseAdmin@att.com,

toll-free number 877-231-5447,

or mailing address: [1025 Lenox Park Blvd, 3rd FL – Atlanta, GA 30319](#).

CITY

Name: Jeremy Talbott

Address: P.O Box 307

Valdez, AK 99686

Phone: (907) 835-4564

E-Mail: JTalbott@valdezak.gov

23. Governing Law/Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alaska. Any legal action brought to enforce this Agreement must be filed in the appropriate Alaska state court located in Valdez, Alaska.

24. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by this Agreement, and no other agreement, statement or promise made by any party which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, the parties to this presence have executed this AGREEMENT in two (2) counterparts, each of which shall be deemed an original, effective in the year and day first mentioned above.

[SIGNATURES TO FOLLOW]

BY: AT&T MOBILITY CORPORATION

ITS: MANAGER

AUTHORIZED:

BY: [Signature]

DATE: 8-5-21

TITLE: DIRECTOR

Mailing Address

1025 Lenox Park Blvd. NE, Third Floor
Atlanta, GA 30319
City, State, Zip Code

Signature of Witness

Date: _____

CITY OF VALDEZ, ALASKA

APPROVED:

[Signature]
Sharon Scheidt, Mayor

Date: 9.7.2021

[Signature]
Sheri L. Pierce, MMC, City Clerk


Date: 9/7/21



NEW CINGULAR WIRELESS PCS,
LLC

RECOMMENDED:

AT&T
Communications Site Agreement



Jeremy Talbott, Ports and Harbors Director

Date: 9-2-21

APPROVED AS TO FORM:
Brena, Bell & Walker, P.C.



Jake W. Staser

Date: 07.08.2021

EXHIBIT A

Map/Description of Premises

Island F, a portion of ADL Nos. 201084 & 212412, also known as "Ammunition Island," referenced in Alaska Tidelands Survey 564, located in Township 8 South, Range 6 West, Copper River Meridian, Valdez Recording District, Third Judicial District, State of Alaska.

EXHIBIT B

List of Specific Uses and Equipment to be Installed on Premises

See Exhibit D

EXHIBIT C

Modification Application Form

User: _____

Address: _____

Modification Requested: _____

Describe New or Modified Equipment: _____

Dates Requested for Completion of Modification: _____

Names of Certified Climber(s) Completing Modification: _____

Submitted Revised Exhibit B? YES/NO

Submitted \$1,500 Modification Application Fee? YES/NO

Signature: _____

Name: _____

Date: _____

EXHIBIT E

Letter of Self Insurance

Re: Self Insurance Letter for City of Valdez Communications Site Agreement

Certificate of Insurance

To Whom It May Concern:

New Cingular Wireless PCS, LLC, is covered for property and liability exposures through insurance programs with large self-insured retentions. Losses that fall within these self-insured (deductible) levels are covered by the financial resources of New Cingular Wireless PCS, LLC, and are administered under the self-insured claims program handled by this office.

This letter is to advise you that the Environmental/Pollution insurance coverages stipulated in the Communications Site Agreement are covered under New Cingular Wireless PCS, LLC's self-insured program.

New Cingular Wireless PCS, LLC, will provide comprehensive general liability insurance coverage through our program -insured program for the activities and operations set forth in the Communications Site Agreement. This letter is valid for the term of the Communications Site Agreement.

DocuSigned by:
Wayne Wooten
Signature: Wayne Wooten
Name: Wayne Wooten
Date: 8/20/2021

DS
M

Allie Ferko

From: Jack Wakeland <jwakeland@brenalaw.com>
Sent: Thursday, July 8, 2021 3:27 PM
To: Allie Ferko
Cc: Jeremy Talbott; Jake Staser
Subject: Re: AT&T (Port of Valdez Communications Site Agreement) Approval

Hi Allie, this agreement is approved as to form and authorized to stamp, thanks.

Best,
Jack

On Jul 8, 2021, at 3:22 PM, Allie Ferko <AFerko@valdezak.gov> wrote:

Jack,

Since Jake is out of the office, can you please authorize the attorney's signature stamp on the subject document? See below for amplifying information.

This has already gone to Council for approval. However, I need permission documented from you/Jake before I can affix your stamp. Unless I am missing something somewhere, I do not appear to have been copied on the original approval email between Jeremy Talbott and Jake.

Take Care,

Allie Ferko, MMC

Public Information Officer & Deputy City Clerk

City of Valdez | PO BOX 307, Valdez, AK 99686

O: (907) 834-3468 | C: (907) 202-0711 | afferko@valdezak.gov

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[Valdez Police Facebook](#) | [Valdez Police Twitter](#) | [NIXLE Emergency Alerts](#)

Valdez COVID-19 Community Updates: www.valdezak.gov/COVID-19

PUBLIC RECORDS LAW DISCLOSURE: This e-mail and responses to this email are subject to provisions of Alaska public records laws and may be made available to the public upon request.

From: Jeremy Talbott <JTalbott@ValdezAK.Gov>
Sent: Thursday, July 8, 2021 2:42 PM
To: jstaser (jstaser@brenalaw.com) <jstaser@brenalaw.com>
Cc: Allie Ferko <AFerko@ValdezAK.Gov>
Subject: AT&T Contract Approve to Form

Good Afternoon Jake,

I hope all is well with you and the family.