

407 Birch Ave SW, P. O. Box 810  
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Shawn O'Neill, Mayor  
Rachelle Denham, City Clerk  
Michelle Whitten, City Treasurer  
John Brockmueller, Chief of Police  
Bryan Morris, PW – CD Director

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To: Mayor and City Council

From: Rachelle Denham, City Clerk

RE: Clerk's Report Council Meeting Date: June 28, 2022

**Clerk Report:**

- **Invitation to Partner on WWRP Project Tour:** The Washington Wildlife & Recreation Coalition (WWRC) has invited city officials to do a project tour of Mayme Shaddock Park with Representative Abbarno from the 20<sup>th</sup> district and WWRC. Mayme Shaddock Park demonstrates the strength of local communities to improve local park facilities and make them accessible to all. This event will be on August 1<sup>st</sup> from 9:00 to 11:00 AM. Please let me know if you would like to attend so I can get you added to the calendar invite!
- **Website Re-Design:** The new website is all completed and is working fantastic! Morgan has been a rock star throughout the process, and she put a ton of work into this project 😊. Please take some time and visit the website.



NAPAVINE CITY COUNCIL REGULAR MEETING MINUTES

June 14, 2022, 6:00 P.M.

Napavine City Hall, 407 Birch Ave SW, Napavine, WA

**CALL TO ORDER:**

Mayor Shawn O’Neill called regular city council meeting to order at 6:00 pm.

**INVOCATION:**

Invocation was led by David Woodrum

**PLEDGE OF ALLEGIANCE:**

Mayor Shawn O’Neill led the flag salute.

**ROLL CALL:**

Council members present: Shawn O’Neill Mayor, Brian Watson Councilor #1, Larry Stafford Councilor #2, Don Webster Councilor #3, and Duane Crouse Councilor #5.

City staff members present: City Clerk – Rachelle Denham, Treasurer – Michelle Whitten, PW/Comm Dev – Bryan Morris, Chief of Police – John Brockmueller, Administrative Assistant to the Chief of Police – Judy Godbey, Court Administrator - Katie Geihl.

**ROLL CALL:**

<b>MOVED:</b>	Brian Watson	Motion: To excuse Councilor Heather Stewart from council meeting.
<b>SECONDED:</b>	Larry Stafford	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried: 4 aye and 0 nay.	

**CONSENT/APPROVAL OF AGENDA**

<b>MOVED:</b>	Duane Crouse	Motion: Approval of Agenda- As Presented
<b>SECONDED:</b>	Brian Watson	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried: 4 aye and 0 nay.	

**APPROVAL OF MINUTES FROM REGULAR COUNCIL MEETING**

<b>MOVED:</b>	Larry Stafford	Motion: Approval of Minutes - Regular Council Meeting from May 24, 2022
<b>SECONDED:</b>	Don Webster	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried: 4 aye and 0 nay.	

**APPROVAL OF MINUTES FROM PUBLIC HEARING MEETING-6-year TRANSPORTATION IMPROVEMENT PLAN 2022-2027**

<b>MOVED:</b>	Duane Crouse	Motion: Approval of Minutes – Public Hearing Meeting from May 24, 2022
<b>SECONDED:</b>	Don Webster	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried: 4 aye and 0 nay.	

**STAFF & COUNCIL REPORTS:**

**Chief of Police – J. Brockmueller**

- Monthly Report in writing. Chief Brockmueller attended the WASPC Conference week of 5/23. He thanked council for the opportunity to attend and had some good networking conversations. Patrol cars are coming. One is in transit and the other was damaged so there is a delay, but they will get here. The Napavine/Toledo policing is still in the early stages. He is working with Michelle on some final numbers. The Toledo council members would like to have a meeting with all Napavine council to further discuss. The Napavine city council approved to hold a Public Meeting on June 28<sup>th</sup> at 5:30 p.m. prior to the Napavine council meeting. The Napavine Funtime Festival is coming up, July 16<sup>th</sup>. The police department will be involved with the event to include traffic duties and overall, more presence. This is also the weekend for STP riders. John has worked with the STP, and traffic will be re-routed onto Sommerville>Hwy 603>Maple and this should help with traffic issues. Operations are normal.

**PUBLIC WORKSHOP SCHEDULED TOLEDO & NAPAVINE COUNCILS**

<b>MOVED:</b>	Don Webster	Motion: Approval to hold a Public Meeting to discuss the Toledo/Napavine Interlocal Policing on June 28, 2022 @ 5:30 P.M.
<b>SECONDED:</b>	Duane Crouse	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried: 4 aye and 0 nay.	

**Public Works/Community Development Director – Bryan Morris**

- Bryan informed council that the utility worker position has been filled. Operations are normal.

**Treasurer- Michelle Whitten**

Michelle stated that the vouchers were higher this time due to when payroll cut and the annual payment to City of Chehalis for sewer treatment. Department heads have been talking about ARPA funds and the second round of funding should be coming soon. If a council member and mayor can look through the list and rank them and then the council can vote. Councilor Duane Crouse offered to look at the ARPA list with the mayor. The mayor stated the payroll system is up and running and Michelle commented that all staff is now on it.

**Legal Counsel – Jim Buzzard**

- Happy to be at meeting and operations are normal.

**NEW BUSINESS**

**VOUCHERS- M. WHITTEN:**

*June 14, 2022, First Council Meeting, (Funds) Total Voucher Numbers: 37574, 37576-37615; \$196,912.52, Payroll Voucher numbers: 37571-37572, 37575; \$12,416.02; Electronic Payments dates EFT\*20220603-05 \$1,230.61; Electronic Payroll Payments; EFT\*20220509-12, EFT\*20220601-02; \$40,928.87 ACH Deposit Dates: May 25<sup>th</sup> & Jun 9, Direct Dep; \$51,423.03. Vouchers Grand Total: \$302,911.05.*

<b>MOVED:</b>	Larry Stafford	Motion: Approval of the Vouchers dated June 14, 2022, First Council Meeting
<b>SECONDED:</b>	Don Webster	
<i>Discussion: No Discussion</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried; 4 aye and 0 nay.	

**Scot Industries Acceptance Info Only:** Director Morris stated that the information for the project was provided to all council and that at the next meeting a motion can be made.

**Local Law Table Legislative Update:** Katie Geihl, Court Administrator presented the council with a summarized detail report in writing as well as spoke about the changes that The Administrative Office of the Courts (AOC) is making regarding the local law table. In the next 3-5 years JIS will be replaced with a new system for case management. AOC is taking over all district and municipal courts' local law tables and they are in the process of cleaning them up to ensure they are compliant with all legislation, both past and present. Our local law table needs updated to comply with RCW 3.62.090 which explains the Public Safety Education Assessment (PSEA) and which violation it applies to. Essentially this will impact all our nuisances. The PSEA assessment adds an additional 105% of the base penalty amount to all fine amounts on those violations. The PSEA revenue is evenly split between state and city, each entity keeping 50%. The council can decide if they want to make changes to the codes and amounts this will require action from city attorney and council if decided to do so. Housekeeping items, in addition to adding the PSEA to sections of our codes there are several sections that need to be updated where the fine amounts can be enforceable. Sections 5.02, 8.04, 10.12.080 and 6.04.310. There are also some other sections of our code that has been recommended to remove, specifically 1.20.010 and 10.06. Katie will create a list of the changes and will provide any assistance to help with the process. Recommendation for parking ordinance is to remove all the 10.06 this will help with the parking ordinance issue to. \*Report is in writing

Mayor: Asked Katie to take the list and figure out what the cost would be currently and then what it would be with the increase.

Katie: Yes, she will make a one page spread sheet showing what is currently in place and price, simple and transparent.

Legal Counsel: If council so directs the court administrator, she can put together the information so it can be further discussed. The changes would be made in form of an ordinance. Some are just housekeeping items that need to be cleaned up which would make the process easier to follow RCW vs individual city ordinances, Legal counsel recommends the city adopts the revised code of Washington then eliminates the identical Napavine city code for efficiency purposes. If city wants to keep some of the codes that is fine but would need to be rewritten in order still be enforceable. Katie has been in communication with the police department about the changes.

**Follow-up on Parking Ordinance Issue:** Katie has been working with the police dept and the parking enforcement ordinance falls in line with the cleanup on ordinances for the local law legislative updates, which was discussed above.

**CITIZEN COMMENTS – NON-AGENDA ITEMS:**

**David Woodrum, Chehalis** – Expressed his appreciation to the city and city staff for all the help and guidance that has been provided with preparations of the memorial service for Jim Haslett. All council members received a paper copy of the program for the service. The memorial service will be on Saturday, June 25, 2022, beginning at 1:00 pm at the Napavine Assembly of God Church. Full details are included on the program.

**Commissioner Lindsey Pollock** – Has recently reached out to city about the .09 funds Jefferson Station application process. Bryan stated that he is waiting on an estimate now. Comm Pollock stated that they are working on restructuring their ARPA distribution and it looks like they will be able to make some funds available for the Mayme Shaddock Park kitchen. Becky Butler will be reaching out for what is needed. Comm Pollock stated that in government language nothing is done until all contracts are signed and that’s what is being worked on. The audience applauded and is so happy to hear this good news.

**ADJOURNMENT:**

<b>MOVED:</b>	Larry Stafford	Motion: To Adjourn – Close of Meeting
<b>SECONDED:</b>	Don Webster	
<i>Discussion: Meeting Adjourned at 6:41p.m.</i>		
<b>VOTE ON MAIN MOTION:</b>	4-0 Motion Carried; 4 aye and 0 nay.	

*These minutes are not verbatim. If so desired, a recording of this meeting is available online from [freeconferencecall.com](https://fcdl.in/XICoWENOKY) at the link <https://fcdl.in/XICoWENOKY>*

**Respectfully submitted,**

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Rachelle Denham, City Clerk

Shawn O’Neill, Mayor

Councilor

**RESOLUTION NO. 22-06-132**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPAVINE, WASHINGTON, DECLARING CERTAIN PROPERTY TO BE SURPLUS TO THE NEEDS OF THE CITY AND DIRECTING DISPOSAL OF SUCH PROPERTY**

**WHEREAS**, the city of Napavine, Washington, is authorized pursuant to RCW 35A.79.010, to dispose of property owned by the city by sale; and

**WHEREAS**, the City Council of the City of Napavine, Washington, considers the below described items of personal property owned by the city to be surplus to the city's needs; and

**WHEREAS**, the City Council of the City of Napavine, Washington, considers the sale of the below described items of personal property to be in the best interest of the citizens and patrons of the city,

**NOW, THEREFORE, BE IT RESOLVED THAT THE** City Council of the City of Napavine, Washington, does declare the following described items of personal property, surplus to the needs of the city:

- 2006 Chevy Silverado Pickup VIN#1GCEK19V16Z208350

**IT IS FURTHER RESOLVED** that by this resolution the above items may be disposed of in a commercially reasonable way to wit; auction, public sale or sealed bid.

**IT IS FURTHER RESOLVED** that Michelle Whitten, Treasurer is designated as the city's designee to determine the method of sale to be utilized by the city, with such determination to be subject to council approval.

**PASSED BY MAJORITY** of the City Council of the City of Napavine, Washington, this \_\_\_\_\_ day of June 2022.

\_\_\_\_\_  
Shawn O'Neill, Mayor

Attest:

\_\_\_\_\_  
Rachelle Denham, Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney, James M. B. Buzzard WBA #33555

Market: PNW  
Cell Site Number: OL0796  
Cell Site Name: Downtown Napavine  
Search Ring Name: OL0796 Downtown Napavine  
Fixed Asset Number: 15725075

## OPTION AND LAND LEASE AGREEMENT

THIS OPTION AND LAND LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Napavine, having a mailing address of ~~235 W Washington St~~ P.O. Box 810, Napavine, WA 9856532 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, Atlanta, GA 30319 (“**Tenant**”).

### BACKGROUND

Landlord owns or controls that certain plot, parcel, or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at 235 W Washington St., Napavine, WA ~~9853298565~~, in the County of Lewis, State of Washington (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. **OPTION TO LEASE.**

(a) Landlord grants to Tenant an exclusive option (the “**Option**”) to lease a certain portion of the Property containing approximately 2,500 square feet including the air space above such ground space, as described on attached **Exhibit 1**, (the “**Premises**”), for the placement of a Communication Facility in accordance with the terms of this Agreement.

(b) During the Option Term, and during the Term, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord’s title to the Property and the feasibility or suitability of the Property for Tenant’s Permitted Use, all at Tenant’s expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant’s inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant’s control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the non-refundable sum of One Thousand and No/100 Dollars (\$1,000.00) within thirty (30) business days after the Effective Date. The Option may be exercised during an initial term of one (1) year commencing on the Effective Date (the “**Initial Option Term**”) which term may be renewed by Tenant for an additional one (1) year (the “**Renewal Option Term**”) upon written notification to Landlord and the payment of an additional One Thousand and No/100 Dollars (\$1,000.00) no later than five (5) days prior to the expiration date of the Initial Option Term. The Initial Option Term and any Renewal Option Term are collectively referred to as the “**Option Term**.”

(d) The Option may be sold, assigned or transferred at any time by Tenant without the written consent of Landlord. Upon notification to Landlord of such sale, assignment or transfer, Tenant shall immediately

be released from any and all liability under this Agreement, ~~including~~ ~~excluding~~ the payment of any delinquent rental or other sums due, without any further action.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing via U.S. Mail. If Tenant exercises the Option, then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, then this Agreement will terminate, and the parties will have no further liability to each other.

(f) If during the Option Term, or during the Term if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, the Property or any of Landlord's contiguous, adjoining ~~or surrounding~~ property (the "**Surrounding Property**"), or in the event of a threatened foreclosure on any of the foregoing, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, the Property or the Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

**2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure ("**Structure**"), associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**"), as well as the right to test, survey, and review title on the Property; Tenant further has the right but not the obligation to add, modify, and/or replace equipment in order to be in compliance with any current or future federal, state, or local mandated application, including, but not limited to, emergency 911 communication services, (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees, and sublicensees, the right to use such portions of the Surrounding Property owned by Landlord as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades, or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, or expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state, or local laws, rules, or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, if the Additional Premises is available to be leased, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord shall be under no obligation to ensure the Additional Premises is available to Tenant to be leased. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

**3. TERM.**



(a) The initial lease term will be five (5) years (the “**Initial Term**”), commencing on the effective date of written notification by Tenant to Landlord of Tenant’s exercise of the Option (the “**Term Commencement Date**”). The Initial Term will terminate on the fifth (5th) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“**Annual Term**”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement. Any month-to-month tenancy created during the Holdover Term shall be terminable by Landlord upon written notice given at least twenty (20) days prior to the monthly rental period. The Holdover Term shall be subject to one and one-half times the normal rent.

(d) The Initial Term, any Extension Terms, any Annual Terms, and any Holdover Term are collectively referred to as the “**Term.**”

#### 4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar month in advance, One Thousand Five Hundred and No/100 Dollars (\$1,500.00) (the “**Rent**”), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. Late Rent shall accrue interest at the rate of twelve percent (12%) per annum. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date.

(b) Upon the commencement of each Extension Term, the monthly Rent will increase by ~~One~~ Three percent (~~3~~34%) over the Rent paid during the previous five (5) year term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

#### 5. APPROVALS.

(a) Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section ~~0015~~ of this Agreement after the applicable cure periods;

(b) by Tenant upon 30 days written notice to Landlord, if Tenant 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 Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon 30 days written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon 30 days written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section ~~0018~~ Condemnation or Section 19 Casualty.

7. **INSURANCE.** During the Option Term and throughout the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Landlord shall be named as an additional insured on any insurance policy required under this section. Proof of compliance with this section shall be provided to Landlord within ten (10) days after mutual acceptance of this Agreement. Failure to provide proof of insurance at the onset of this Agreement, or at any time during the Option Term, Initial Term, or any subsequent Term, shall constitute a material breach of this Agreement under Section 15(a). Landlord may request that Tenant provide documentation that required insurance policies remain in full force and effect at any time during the term of this Agreement, and Tenant shall provide such documentation within fifteen (15) days of any such request. Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant, if Landlord is in possession of such, with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, 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.

(b) Landlord will not grant, after the Effective Date, a lease, license, or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord 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. Tenant has actual notice the Property is located in or in close proximity to a City park which contains, among other items, field lights and an amphitheater for concerts. The public regularly enjoys the City park for leisure activities.

(d) For the purposes of this Agreement, "interference" does not include pre-existing uses on the Property or Surrounding Property, specifically including but not limited to field lights, the amphitheater, and

general public leisure activities. “Interference” may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

## **9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend, and hold Landlord, its officers, officials, employees, invitees, agents, independent contractors, and volunteers harmless from and against any and all claims, injury, loss, damage or liability-, and- costs or expenses in connection with a third party claim (including reasonable attorneys’ fees and court costs) arising directly from the actions or omissions of Tenant, including the installation, use, maintenance, repair, or removal of the Communication Facility or Tenant’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents, or independent contractors.

(b) Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all injury, loss, damage or liability-, and 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 Landlord, its employees, invitees, agents, or independent contractors, or Landlord’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, 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 9 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.

## **10. WARRANTIES.**

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant’s Permitted Use and enjoyment of the Premises under this Agreement; (iii) then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord’s execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) Tenant represents, warrants, and agrees (i) Tenant shall ensure the Property, at all times, is free of judgments, liens, encumbrances, or any other agreement which would adversely affect the Property; (ii) Tenant’s execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Tenant; (iii) to ensure Landlord’s interest in the Property is not encumbered.

## **11. ENVIRONMENTAL.**

(a) Landlord represents and warrants, except as may be identified in **Exhibit 11** attached to this Agreement, (i) to the best of Landlord's Knowledge, the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) to the best of Landlord's Knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry, or remediation. Landlord and Tenant agree that ~~each Tenant shall~~ will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to ~~that party's Tenant's~~ activity conducted in or on the Property and/or the Surrounding Property. Tenant represents, covenants, and warrants that Tenant's operations in, on, or under the Property and Surrounding Premises shall Property shall be in compliance with all applicable environmental laws

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant due to Tenant's acts or omissions.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses, and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal, or restoration work required by any governmental authority. The provisions of this Section ~~001~~ will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health, or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord. Provided, if the presence of hazardous materials on the Property and/or Surrounding Property is attributable to the acts of omissions of Tenant, then notwithstanding any provision herein to the contrary, including Section 6, Tenant shall be liable for Rent due or which will become due, for the remainder of the then current Term.

**12. ACCESS.** At all times throughout the Term of this Agreement, ~~Tenant~~, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, through an easement granted by the City for the benefit of the Tenant. Said easement shall be recorded with the Lewis County Auditor's Office at the expense of Tenant. The location of the Easement shall be determined by mutual agreement of the City and Tenant. The purpose of the easement shall be for pedestrian and vehicular traffic, and to allow Tenant access to install, maintain, and operate the from an open and improved public road to the Premises, for the installation, maintenance, and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys, and other instruments necessary for such Access to Tenant. Upon Tenant's request, Landlord will, at Tenant's expense, execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("**UAS**") in connection with its installation, construction, monitoring, site audits, inspections,

maintenance, repair, modification, or alteration activities at a Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. ~~In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.~~

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities and shall restore the Property and any damaged area to its original state. ~~Any~~ All portions of the Communication Facility shall be removed by that Tenant ~~does not remove~~ within one hundred twenty (120) days after the earlier of the later of the end of the Term and cessation of Tenant's operations at the Premises or early termination of this Agreement. ~~shall be deemed abandoned and owned by Landlord.~~ Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs, or other vegetation.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit.

(b) Tenant 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 Tenant on the Premises. ~~In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts, and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.~~

(c) As noted in Section ~~005~~(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. ~~If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity.~~ Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for

the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from a public right-of-way, and under an access easement as described in Section 12 herein, ~~n to the Premises, and upon the Premises,~~ for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at ~~no the expense of cost to~~ Tenant or the service company.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant 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 Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided 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 Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities, and obligations under this Agreement to the extent of such assignment.

**17. NOTICES.** All notices, requests, and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused, or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant:                   New Cingular Wireless PCS, LLC  
Attn: Tower Asset Group - Lease Administration  
Re: Cell Site #: OL0796; Cell Site Name: Downtown Napavine (WA)  
Fixed Asset #: 15725075  
1025 Lenox Park Blvd NE  
Atlanta, Georgia 30319

With a copy to:               New Cingular Wireless PCS, LLC  
Attn.: Legal Dept – Network Operations

Re: Cell Site #: OL0796; Cell Site Name: Downtown Napavine (WA)  
Fixed Asset #: 15725075  
208 S. Akard Street  
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Napavine  
407 Birch Ave SW  
P.O. Box 810235 W Washington St  
Napavine, WA 9856598532

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

**18. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

**19. CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of ~~the casualty or other harm receiving notice of such casualty or other harm.~~ If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date Notice of Termination is received by the City of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent after the effective date of termination on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. ~~If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm.~~ Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

~~**20. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.~~

**21. TAXES.**

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, ~~recording~~, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. PROVIDED that Tenant shall be responsible for any recording fees associated with recording a memorandum of this Agreement pursuant to Section 24(b) herein and any document to be recorded at the request of Tenant. ~~Tenant~~. Tenant shall also be responsible for ~~(y)~~ any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and ~~(z)~~ all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate, or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated, or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in



the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

## **22. SALE OF PROPERTY.**

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer, or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease, or use any areas of the Property or the Surrounding Property owned by Landlord for the installation, operation, or maintenance of other wireless communication facilities if such installation, operation, or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing, or using any areas of the Property or the Surrounding Property for purposes of any installation, operation, or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

**23. RIGHT OF FIRST REFUSAL.** Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer, but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign, or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. ~~If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying~~

~~with this Section 23, the sale, conveyance, assignment or transfer shall be void.~~ Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

#### 24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified, or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum of Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge, and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental, or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors, and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution, and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant

pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment, and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant, and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged, and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out, and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the Effective Date.

**“LANDLORD”**

City of Napavine

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

Print Name:

Its:

Date:

**“TENANT”**

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

By: AT&T Mobility Corporation

Its: Manager

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

Print Name:

Its:

Date:

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]**



# EXHIBIT 1

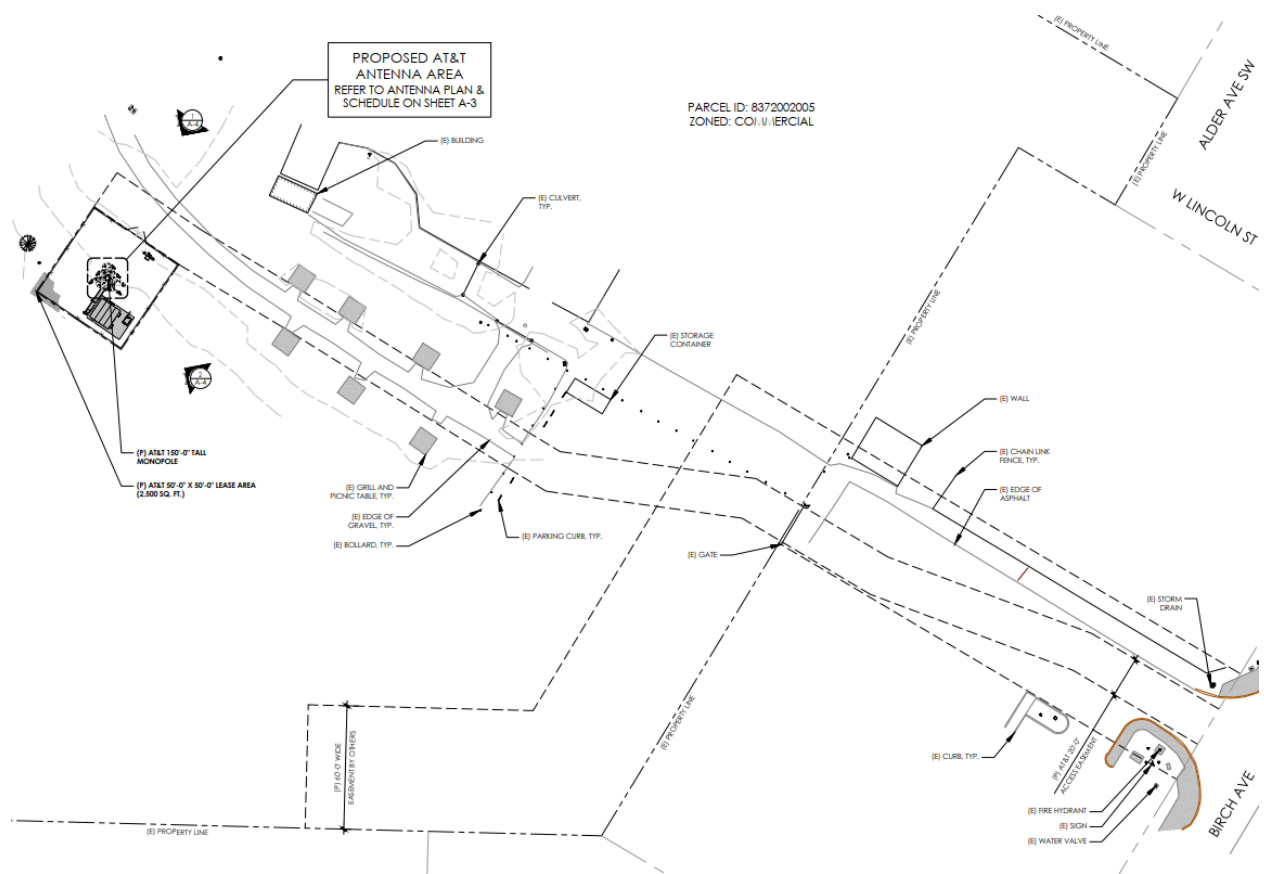
## DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Land Lease Agreement dated [Insert Date], 2022, by and between City of Napavine, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:



**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

1.

**EXHIBIT 1**  
(Property)





**EXHIBIT 11**

**ENVIRONMENTAL DISCLOSURE**

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

*N/A*

**EXHIBIT 12**  
**STANDARD ACCESS LETTER**  
[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff  
[Landlord, Lessee, Licensee]  
[Street Address]  
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents, and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

\_\_\_\_\_  
Landlord Signature

**EXHIBIT 24(b)**  
**MEMORANDUM OF LEASE**  
[FOLLOWS ON NEXT PAGE]

**MEMORANDUM  
OF  
LEASE**

This Memorandum of Lease is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between City of Napavine, having its principal office/residing at ~~235 W Washington St~~ 407 Birch Ave SW, Napavine, WA 9856532 (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Option and Land Lease Agreement ("**Agreement**") on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option, with Four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.
5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions, or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

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

**LANDLORD:**

City of Napavine,  
By: \_\_\_\_\_  
Print Name:  
Its:  
Date:

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

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name:  
Its:  
Date:

**TENANT:**

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]**



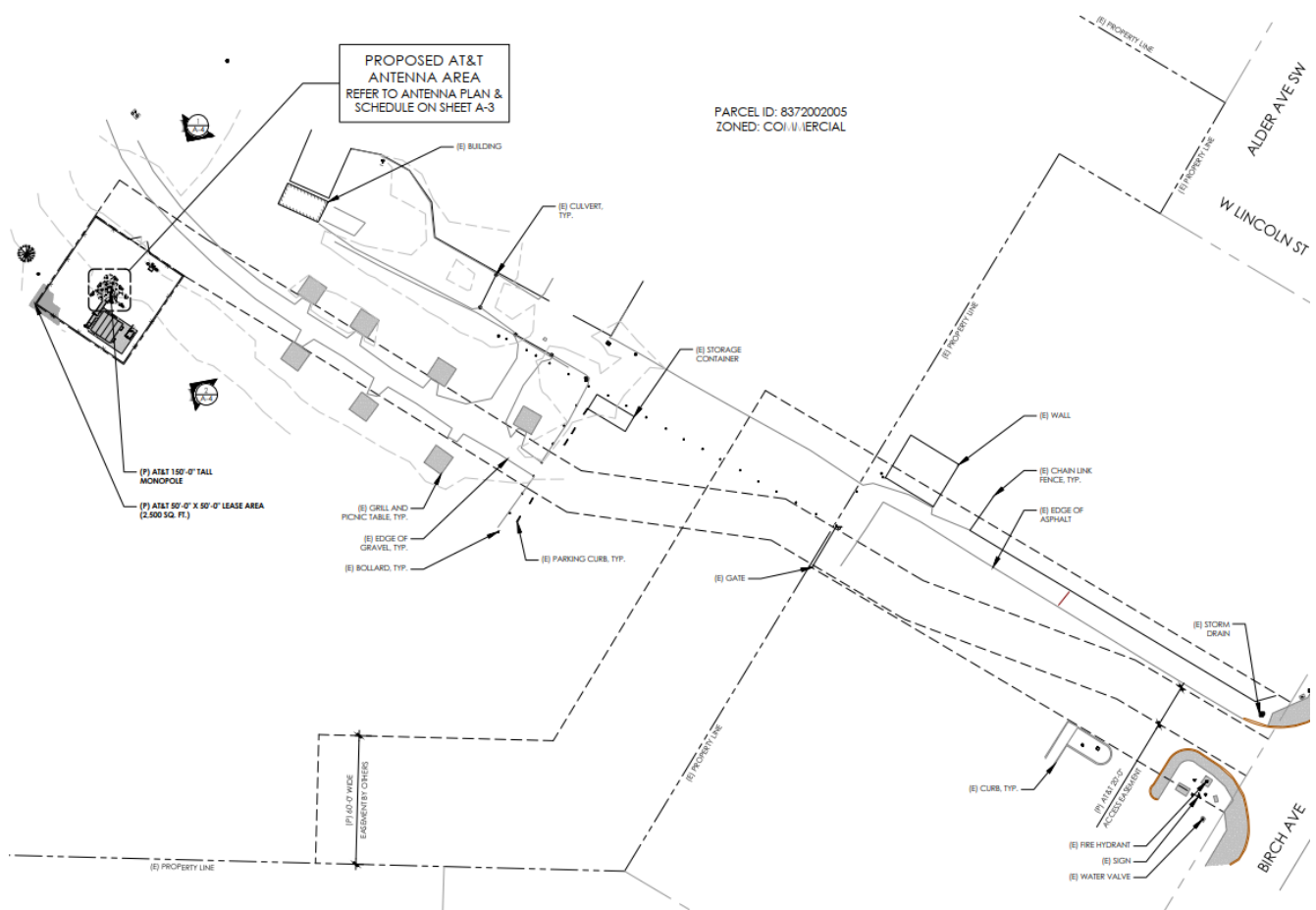
**EXHIBIT 1 TO MEMORANDUM OF LEASE**  
**DESCRIPTION OF PROPERTY AND PREMISES**

Page        of

to the Memorandum of Lease dated \_\_\_\_\_, 2022, by and between -City of Napavine, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:





**W-9 FORM**

[FOLLOWS ON NEXT PAGE]

## Request for Taxpayer Identification Number and Certification

**Give Form to the requester. Do not send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p><b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p><b>2</b> Business name/disregarded entity name, if different from above</p> <hr/> <p><b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <p> <input type="checkbox"/> Individual/sole proprietor or single-member LLC                 <input type="checkbox"/> C Corporation                 <input type="checkbox"/> S Corporation                 <input type="checkbox"/> Partnership                 <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____  <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ▶ _____         </p>	<p><b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p style="font-size: small;">(Applies to accounts maintained outside the U.S.)</p>
	<p><b>5</b> Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p><b>6</b> City, state, and ZIP code</p> <hr/> <p><b>7</b> List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p>

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>					
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	-		-		
or					
<b>Employer identification number</b>					
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; text-align: center;">-</td> <td style="width: 70%; border: 1px solid black; height: 20px;"></td> </tr> </table>		-			
	-				

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	<p>Signature of U.S. person ▶</p>	<p>Date ▶</p>
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
  - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
  - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
  - Form 1099-S (proceeds from real estate transactions)
  - Form 1099-K (merchant card and third party network transactions)
  - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*