

## LAND LEASE AGREEMENT

This Agreement, made this 1<sup>st</sup>, day of August, 2003 between the Hesperia Fire District, a body politic and corporate, with its mailing address located at 15776 Main St, Hesperia, California 92345, hereinafter designated LESSOR and Pacific Bell Wireless, a Nevada limited liability company, d/b/a Cingular Wireless, with its principal office located at 3345 Michelson Drive, Irvine, CA 92612, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the Parties or individually as the Party

1. PREMISES The entirety of LESSOR'S property, referred to hereinafter as the "Property" is described as Fire Station #301, 9430 11<sup>th</sup> Street, Hesperia, CA 92345 APN 0409-032-23 & 24. The portion of the Property leased to Lessee (hereinafter the "Premises") and the access way across the Property from 11<sup>th</sup> Street are shown on Exhibit "A" attached hereto.

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey, upon acceptance by LESSOR, shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

3. TERM This Agreement shall be effective as of the date of execution by both parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments will be due at an annual rental of Twenty-four Thousand Dollars (\$24,000) to be paid in equal monthly installments of One Thousand Seven Hundred Fifty Dollars (\$1,750), on the first day of the month, in advance, to LESSOR or to such other person, firm or place as the LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date. The Commencement Date is defined as being the date the Agreement has been duly executed by LESSOR and LESSEE. As additional consideration, LESSEE shall pay to LESSOR concurrently with the execution of this Lease, the following

(a) \$3,000 directly to the Hesperia Community Library

4. RENTAL INCREASES.

(a) Commencing on the first anniversary of the Commencement Date and continuing on each anniversary thereafter, the annual rent due under this Agreement shall be increased by an amount equal to Five Percent (5%) of the annual rent that was in effect for the previous year

5. EXTENSIONS This Agreement shall automatically be extended for four (4) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least ninety (90) days prior to the end of the then current term

6. ADDITIONAL EXTENSIONS If at the end of the fourth (4th) five (5) year

extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term. Annual rent for each such additional five (5) year term shall be increased to One Hundred Fifteen Percent (115%) of the annual rent payable with respect to the last year of the immediately preceding five (5) year term.

7 USE, GOVERNMENTAL APPROVALS

(a) Use and Improvements LESSEE shall use the Premises for the purpose of constructing, maintaining and operating a wireless communications facility and uses incidental and all necessary appurtenances. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements shall be at LESSEE's expense, and the installation of all improvements shall be at the discretion and option of the LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto, during the term of this Agreement. LESSEE will maintain the Premises in good condition, reasonable wear and tear excepted.

(b) Consequences of Failure to Obtain Approvals and Prior to Commencement of Construction It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the Governmental Approvals) that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action that would adversely affect the status of the Property with respect to the proposed use by LESSEE. In the event that any of such applications for such Governmental Approvals should be finally rejected or any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or soil boring tests are found to be unsatisfactory so that LESSEE in its sole discretion will be unable to use the Premises for its intended purposes or the LESSEE determines that the Premises is no longer technically compatible for its intended use, LESSEE shall have the right to terminate this Agreement giving sixty (60) days prior written notice to LESSOR, the expiration date of which will be the effective Termination Date.

(c) Events Occurring Following Commencement of Construction Notice of the LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the LESSEE. All rentals paid to said termination date shall be retained by the LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the



representations, warranties and indemnities made by each party to the other hereunder. Otherwise, all the Parties shall have no further obligations including the payment of money, to each other.

8. GENERAL INDEMNITY. Except as to the gross negligence or willful misconduct of LESSOR, LESSEE shall indemnify, defend and hold LESSOR and its officials, officers, employees, and agents harmless from any liability, injury, damages, claims, charges, liens, actions (whether legal or administrative), in any way arising from LESSEE's, or its employees, its agents, or its subcontractor's performance of its obligations under this Agreement, entry in, on, or under the Premises, or any death, bodily injury, or property damage in any way arising from its use and improvements thereon. LESSEE shall defend LESSOR and its officials, officers, employees, and agents with legal counsel reasonably acceptable to said persons.

9. LESSEE'S LIABILITY INSURANCE. LESSEE shall, at its sole expense, obtain and keep in force until the expiration of the last term of the Lease, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring LESSEE, and naming the LESSOR as an additional ~~named~~ insured, against any liability arising out of or in connection with LESSEE's possession and use of the Premises and all improvements thereon, or any other claim arising out of or relating to the work on the Premises. Such insurance policy shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars (\$3,000,000.00), and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than One Million Dollars (\$1,000,000.00), which amounts shall be increased from time to time as reasonably required by the LESSOR. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The policy shall insure performance by LESSEE of the indemnity provisions of Section 8 [General Indemnity] of this Agreement. The limits of said insurance shall not limit the liability of LESSEE hereunder.



10. WORKER'S COMPENSATION INSURANCE. LESSEE shall, at its sole expense, obtain and keep in effect (or cause any contractor to procure and keep in effect), Worker's Compensation Insurance covering all employees of LESSEE and any contractor and, if required under applicable law, any subcontractor engaged in work on, or with respect to, the Premises, in such amount as is in compliance with statutory requirements, and in the minimum amount for one (1) person of not less than One Million Dollars (\$1,000,000.00), and in the minimum amount for one (1) accident or occurrence of not less than Five Hundred Thousand Dollars (\$500,000.00).

11. INSURANCE POLICIES. All of LESSEE's insurance shall be primary insurance written in a form satisfactory to the LESSOR by companies licensed in California acceptable to the LESSOR (which must be Class IX A or better as rated by Best's Insurance



Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice to LESSOR. Copies of the policies, together with satisfactory evidence of payment of premiums, shall be deposited with the LESSOR on or prior to the date hereof, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage

12 OTHER INSURANCE PROVISIONS. Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be exhausted in connection with claims arising out of or relating to the Premises. If any claim, event, or loss occurs during the policy period that will or may decrease the aggregate amount of insurance coverage available under the policy, LESSEE shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by excess or umbrella policies, those policies shall specifically provide that the coverage under those policies shall drop down as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such excess or umbrella policies shall also contain all the other provisions required by this Agreement

13 INTERFERENCE LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such radio equipment that is of the type and frequency that will not cause interference with the existing equipment of the LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, LESSEE shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance

14 REMOVAL UPON TERMINATION. LESSEE, upon termination of the Agreement, shall, within ninety (90) days, remove its building(s), antenna structure(s) (except footings), fixtures and all personal property and otherwise restore the Premises to its original condition, reasonable wear and tear excepted. LESSOR agrees and acknowledges that all of the equipment, fixtures and personal property of the LESSEE shall remain the personal property of the LESSEE and the LESSEE shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed. After ninety (90) days, if LESSEE has not removed its property, LESSOR may remove the property at LESSEE's cost and dispose of it in compliance with applicable statutory requirements

15 RIGHTS UPON SALE Should the LESSOR, at any time during the term of this Agreement, decide to sell all or any part of the Property to a purchaser other than LESSEE, such sale shall be under and subject to this Agreement and LESSEE's rights hereunder, and any



sale by the LESSOR of the portion of this Property underlying the right-of-way herein granted shall be under and subject to the right of the LESSEE in and to such right-of-way.

16 QUIET ENJOYMENT LESSOR covenants that LESSEE, on paying the rent and performing the covenants and obligations of LESSEE hereunder, shall peaceably and quietly have, hold and enjoy the Premises

17 TITLE LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement LESSOR further covenants that there are no other liens, judgments or impediments of title on the Property or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above

18 INTEGRATION It is agreed and understood that this Agreement contains all agreements, promises and understandings between the LESSOR and LESSEE with respect to this Property and the Premises and that no verbal or oral agreements, promises or understandings shall be binding upon either the LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not effect the validity and enforce ability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

19 GOVERNING LAW This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of California.

20 ASSIGNMENT/SUBLETTING

(a) This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR (i) to any of the LESSEE's partners or parent firms, (ii) LESSEE's successors-in-interest and their affiliates and subsidiaries, (iii) in connection with the sale, exchange, or other transfer of LESSEE's FCC authorization for the geographic market area in which the Premises are

located or substantially all of LESSEE's assets in the geographic market area where the Premises are located, or (iv) in connection with any financing, loan, security interest, pledge, or mortgage of LESSEE's property As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld or delayed LESSEE may sublet the Premises within its sole discretion, upon notice to LESSOR Any sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. No successor or assignee of this Agreement shall

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be permitted to devote the Property to any uses, or to construct any improvements thereon, other than those uses and improvements provided for in paragraph 7 [Use; Governmental Approvals] of this Agreement

(b) LESSEE must design its facility such that it can reasonably accommodate collocation of its site by similar wireless communications service providers and engage in good faith negotiations with any requests for such collocation. In the event of any subletting by LESSEE to another carrier for collocation purposes, such other carrier will be required to enter into a separate lease with LESSOR for ground space of its equipment.

21 NOTICES All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice).

LESSOR: City of Hesperia  
Attention: City Manager  
15776 Main Street  
Hesperia, California 92345

LESSEE: Cingular Wireless, LLC  
6100 Atlantic Boulevard  
MailCode GAN02  
Norcross, GA 30071  
Attn: Network Real Estate Administration

With Copy to: Cingular Wireless, LLC  
3345 Michelson Drive, Suite 100  
Irvine, CA 92612  
Attn: Legal Department

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

22. POSSESSORY INTEREST TAX LESSEE acknowledges that the property interest created hereby may be a possessory interest subject to property taxation. LESSEE shall be responsible for payment of all property taxes levied on such possessory interest.

23 SUCCESSORS This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

24 RECORDING. LESSOR agrees to execute a Memorandum of this Lease



Agreement that LESSEE may record with the appropriate Recording Officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either term or rent payments

25 **DEFAULT** In the event there is a default by the LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, the LESSEE shall have fifteen (15) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default, provided the LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The LESSOR may not maintain any action or effect any remedies for default against the LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this Paragraph

26 **CASUALTY** In the event of damage by fire or other casualty to the Premises that disrupts LESSEE's operations and that cannot reasonably be expected to be repaired within forty five (45) days following same, or if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty five (45) days, LESSOR shall make available to LESSEE a temporary site on the Property (or on other property owned or controlled by LESSOR) which in LESSEE's sole discretion is equally suitable for LESSEE's use. LESSEE may construct, operate, and maintain substitute LESSEE's Facilities thereon until LESSEE's facilities are fully restored and operational on the Premises. Rent shall abate in full during any time that LESSEE is unable to operate LESSEE's facilities on available city/district Property.

27 **CONDEMNATION** In the event of any condemnation of the Property, LESSEE may terminate this Lease upon fifteen (15) days written notice to LESSOR if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the antennas, equipment, its relocation costs and its damages and losses, including any loss of goodwill, (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Lease.

28 **SUBMISSION OF LEASE** The submission of this Lease for examination does not constitute an offer to lease the Premises, and this Lease becomes effective only upon the full execution of this Lease by the Parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions of this Lease. Each of the Parties hereto warrants to the other that the person or persons executing this Lease on behalf of such Party has the full right, power and authority to enter into and execute this Lease on such



Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Lease

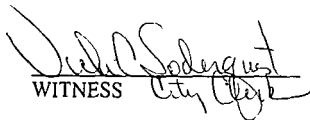
29 APPLICABLE LAWS. LESSEE shall use the Premises as may be required or as permitted by applicable laws, rules and regulations LESSOR agrees to keep the Property in conformance with all applicable laws, rules and regulations.

30 SURVIVAL The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement Additionally, any provisions of this Agreement that require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration

31. CAPTIONS The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR: HESPERIA FIRE DISTRICT, a body politic and corporate

  
WITNESS

By:

  
Robb Quincey, City Manager

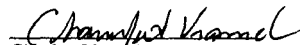
LESSEE: PACIFIC BELL WIRELESS, LLC, a Nevada limited liability company

By. GSM FACILITIES, LLC, its sole member

By: CINGULAR WIRELESS, LLC, its agent

\_\_\_\_\_  
WITNESS

By:

  
Charles Vranek

Its:

Regional Director, Network Deployment





**EXHIBIT A**  
**LEGAL DESCRIPTION OF LESSOR'S PROPERTY**

Lessor's Property of which Premises are a part is legally described as follows

APN: 0409-032-23 & 24

All of that certain real property located in the County of San Bernardino, State of California, being more particularly described as follows:

**Lot 215 of Tract 4957, Old Trall Ranchos-Unit No. 2 in the City of HESPERIA, County of SAN BERNARDINO, State of California, as per map recorded in Book 60, page(s) 73 to 76 inclusive, of Maps, in the office of the County Recorder of said County.**

**Excepting therefrom an undivided one-half interest in and to all oil, gas and minerals lying and being more than 200 feet below the respective present surface elevations of the property, provided, however, that such excepted ownership of such one-half interest in and to such oil, gas and minerals does not include and shall not be construed to include any right to entry upon any part of the surface of the herein described property for the purposes of exploration, storage, or minerals, as excepted in that certain Deed from Appleton Land, Water and Power Company to N. K. Mendelson, et al, recorded June 11, 1954 in Book 3400, page(s) 409, Official Records of San Bernardino County.**



**EXHIBIT B**  
**DESCRIPTION OF PREMISES**

The Premises consist of those areas described/shown below and where Lessee's communications antennae, equipment, cables and utilities occupy Lessor's Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown below, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Property.

See attached sheets dated 07/07/03

Identified as SB-258-02-P1

A final drawing, Site Plan, or copy of a property survey substantially depicting the above will replace this Exhibit "B" when initialed by Lessor

- 1 This Exhibit may be replaced by a land surveyor Site Plan of the Premises once it is received by Lessee.
- 2 Setback of the Premises from the Lessor'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, mounting positions may vary from what is shown above



PAGES 11-16 OF THE AGREEMENT HAVE BEEN:

REDACTED DUE TO INFORMATION BEING MARKED PROPRIETARY – COPY OF ORIGINAL ON FILE WITH THE SECRETARY OF THE BOARD.