

WIRELESS COMMUNICATIONS INCENTIVE AGREEMENT

BETWEEN

CLARK COUNTY

and

NEW CINGULAR WIRELESS PCS, LLC

THIS WIRELESS COMMUNICATIONS INCENTIVE AGREEMENT (“Agreement”) is made and entered into on July 6, 2021 (“Effective Date”), by and between Clark County, a political subdivision of the State of Nevada, (“County”), and New Cingular Wireless PCS, LLC, a limited liability company duly created, organized, and existing under and by virtue of the laws of the State of Delaware (“Licensee”).

RECITALS

WHEREAS, the County is the owner of Municipal Facilities that are necessary in the performance of its governmental functions; and

WHEREAS, the Licensee furnishes communications services in various areas within which the County has Municipal Facilities; and

WHEREAS, the County’s Municipal Facilities have limited capacity for access and use by others for attachments to provide communications services; and

WHEREAS, the Licensee has signed a Master Wireless Use License Agreement (MLA) with the County, dated July 6, 2021, that allows the Licensee to place and maintain wireless communications facilities and equipment on or in the County’s Municipal Facilities in the Rights-of-Way of the County throughout the County’s unincorporated boundaries; and

WHEREAS, the MLA provides that the County Manager may negotiate incentive agreements with the Licensee to modify the wireless site license fee and duration of the MLA pursuant to the applicable provisions in Clark County Code Chapter 5.02; and

WHEREAS, the Licensee desires to enter into an incentive agreement with the County to modify the wireless site license fees contained in Chapters 5.02 and 6.12 of the Clark County Code and the duration of the MLA in consideration for a capital contribution by the Licensee to compensate the County for acquisition of Type 5 Multicarrier Smart Poles, as defined in Chapter 5.02 of the County Code, to accommodate the Licensee’s wireless communications facilities;

NOW, THEREFORE, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

TERMS AND CONDITIONS:

1. DEFINITIONS

Definitions of terms in this Wireless Communications Incentive Agreement shall be the same as those definitions listed in Clark County Code Chapters 5.02 and 6.12, as amended from time to time.

2. WIRELESS COMMUNICATIONS INCENTIVE AGREEMENT DURATION, CONDITIONS, EXTENSION

This Agreement shall be non-exclusive and shall be in force and effect from the Effective Date of this Agreement and shall continue to be in force during the term of the MLA and any extensions or renewals, unless it is earlier terminated by either party, or is superseded by a subsequent agreement. This Agreement may be terminated early by either party, with or without cause upon ninety (90) calendar days' written notice. The Licensee agrees that it will not be entitled to any rights or damages as a result of termination of this Agreement and waives any causes of action it may have against the County. Any such early termination of this Agreement shall not affect the term of the MLA.

3. MASTER WIRELESS USE LICENSE AGREEMENT DURATION, CONDITIONS, EXTENSION

Provided that the Licensee is not in default of any of its obligations under its MLA at the end of its 10-year term ("Initial Term"), the MLA shall be automatically renewed for two (2) consecutive five (5) year terms (each, a "Renewal Term"), unless at least ninety (90) days prior to the expiration of in the Initial Term or of the first Renewal Term, as applicable, either the County or the Licensee notifies the other party in writing of termination of this Agreement at the end of the then current Term. The Initial Term and any exercised Renewal Terms shall be collectively referred to as the "Term."

4. LICENSE PAYMENTS AND FEES

The Licensee shall pay all payments and fees assessed in accordance with Clark County Code Chapter 5.02 and Chapter 6.12, as amended from time to time, except as otherwise provided for in this section.

- (A) For each Communication Bay, as defined in Clark County Code Chapter 5.02, (a 4G and a 5G installation on a municipal facility are considered as one Communication Bay) on which the Licensee installs wireless communications facilities and chooses to provide a capital contribution to

the County for the cost of acquiring the Type 5 Multicarrier Smart Pole, the Licensee shall pay:

- (1) A one-time payment of Twenty-Two Thousand Eight Hundred Fifty and No/100 Dollars (\$22,850.00) ("Capital Contribution"); and
 - (2) An annual recurring fee that is inclusive of any charges for the use of the County's electric power, subject to annual increases pursuant to Section 5.02.210(a)(5), as follows:
 - a. Up to 1,000 maximum watts – Five Hundred Sixty-Five and No/100 Dollars (\$565.00);
 - b. Up to 2,000 maximum watts – One Thousand One Hundred Thirty and No/100 Dollars (\$1,130.00); or
 - c. Up to 3,000 maximum watts – One Thousand Six Hundred Ninety-Five Dollars (\$1,695.00).
- (B) Payment of the Capital Contribution shall be remitted to the Department of Business License upon written notification by the Licensee with detailed identification of the Type 5 Multicarrier Smart Pole to which the Capital Contribution applies.
- (C) In the event of the early termination of this Incentive Agreement by the county, the county will reimburse licensee the portion of the applicable one-time payment referred to above after proration based on the number of whole years remaining in the 10-year life of the applicable Type 5 Multicarrier Smart Poles for which payment was made in advance by the licensee.

5. NOTICE

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given either when personally delivered, or sent by certified mail return receipt requested, or faxed with proof of transmission followed by mailing, addressed as follows:

If to the Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. Clark County Master Wireless Use License Agreement (NV)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. Clark County Master Wireless Use License Agreement (NV)
208 S. Akard Street
Dallas, TX 75202-4206

If to the County:

Director of Business License Clark County
500 S. Grand Central Pkwy., 3rd Floor
PO Box 551810
Las Vegas, NV 89155-1810

6. *TRANSFER AND ASSIGNMENTS*

The terms and conditions for transfer and assignment of Master Wireless Use License Agreements pursuant to the applicable sections of Clark County Code Chapter 5.02, as amended from time to time, shall apply to this Agreement.

7. *RIGHTS RESERVED TO COUNTY*

The County does hereby expressly reserve its rights, powers and authorities pursuant to the applicable sections of Clark County Code Titles 5 and 6, as may be amended from time to time. The County expressly reserves the right to amend this Agreement by amendment to the Clark County Code to the maximum extent permitted by law.

8. *AMENDMENTS*

Except as otherwise provided in Section 6 above, this Agreement may only be amended by written agreement between the Parties, subject to the approval of the County Commission.

9. *SEVERABILITY*

If any provision, section, paragraph, sentence, clause or phrase of this Agreement is for any reason held to be invalid or unconstitutional, in part or whole, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such invalidity or unconstitutionality shall be deemed a separate, distinct portion, and not affect the validity of the remaining portions of this Agreement. It is the intent of the Licensee in requesting this Agreement and of the County Commission in approving this Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any portion of provision, and to this end all provisions of the Agreement are declared to be severable.

10. GIFTS

No officer or employee of the Licensee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given for the use and benefit of the County or political campaign contributions that comply with applicable federal, state and local laws.

11. PUBLIC PURPOSE

All of the regulations provided in this Agreement are hereby declared to be for a public purpose and the health, safety and welfare of the general public. Any member of the governing body of County official or employee charged with the enforcement of this Agreement, acting for the County in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties. Neither the County nor the Licensee by accepting this Agreement waives its rights to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Agreement, including seeking injunctive relief in a court of competent jurisdiction.

12. APPLICABLE LAW

This Agreement is governed by and construed and enforced in accordance with the laws of Clark County, the State of Nevada, and any applicable federal laws.

13. ENTIRE AGREEMENT

The preparation, execution, and delivery of this Agreement by the Parties have been induced by no representations, statements, warranties or other agreements other than those expressed herein or set forth in the MLA and all applicable provisions of Clark County Code Titles 5, 6, and 30, as amended from time to time. This Agreement embodies the entire understanding of the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter of this Agreement unless such agreements or understandings are expressly referred to and incorporated therein.

14. COUNTERPARTS

This Agreement may be executed on one or more counterparts, each of which

shall be regarded as an original and all of which shall constitute the same Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be legally executed in duplicate this July 6, 2021.

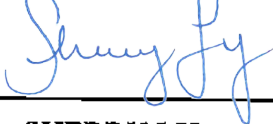
CLARK COUNTY BOARD OF COMMISSIONERS

By: _____
MARILYN KIRKPATRICK, Chair

ATTEST:

LYNN MARIE GOYA, Clerk

APPROVED AS TO FORM
DISTRICT ATTORNEY'S OFFICE



BY: SHERRY LY
Deputy District Attorney

NEW CINGULAR WIRELESS PCS, LLC
A Delaware Limited Liability Company

By: AT&T Mobility Corporation
Its: Manager

By:  _____
Name: JARROD BLESS
Title: DIRECTOR CIE

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San DiegoOn June 03, 2021

before me,

Michael W. Murtaugh, Notary Public

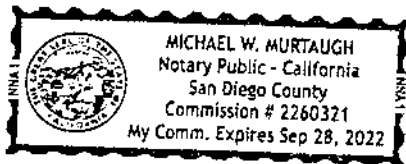
Date

Here Insert Name and Title of the Officer

personally appeared Jarrold Joseph Bess

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____