



ORIGINAL

Contract Number

21403

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	New Cingular Wireless PCS, LLC
Contractor Representative	Kris Sanders-Smart Link
Telephone Number	(760) 218-4847
Contract Term	5 year initial term, commencing upon full execution, with three (3) five (5) year options to extend
Original Contract Amount	\$128,663.18
Amendment Amount	\$0
Total Contract Amount	\$128,663.18
Cost Center	6701004250
GRC/PROJ/JOB No.	69003925
Internal Order No.	

Briefly describe the general nature of the contract:

The contract is a license agreement for a period of five (5) years, commencing on the full execution of the license, with three (3) five (5) year options to extend the term of the license for Premises consisting of approximately 886 square feet of unimproved land located at the Big Bear Landfill, 38550 Holcomb Valley Road, Big Bear City, CA for the placement, maintenance and operation of a cellular communications site containing a 100' monopole with mono-pine tree coverings with a total of twelve (12) panel antennas, (four per sector); thirty-six (36) remote radio units (RRUs) (12 per sector); one (1) four-foot diameter microwave (MW) antenna; one (1) walk in telco cabinet; one (1) Generac 27 KW DC Generator with 180 gallon diesel tank mounted on containment slab; one (1) step-down transformer; one (1) fiber cabinet; one (1) GPS antenna and an 8' tall wrought iron perimeter fence. County will receive revenue of \$24,000 for the first year with 3.5% annual escalations thereafter.

Approved as to Legal Form ▶ Please see signature page Agnes Cheng, Deputy County Counsel Date _____	Reviewed for Contract Compliance ▶ _____ Date _____	Reviewed/Approved by Department ▶ Jim Miller, Real Property Manager, RESD Date 5-27-21
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COUNTY OF SAN BERNARDINO

LICENSE AGREEMENT

LICENSEE: New Cingular Wireless PCS, LLC, a Delaware limited liability company
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

COUNTY: COUNTY OF SAN BERNARDINO
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

PREMISES: Approximately 886 square feet of County-owned land located at the Big Bear Landfill, 38550 Holcomb Valley Road, Big Bear City.

TERM OF LICENSE: Five (5) years initial term with three (3) five-year options to extend the term of the License Agreement

COMMENCEMENT DATE OF LICENSE: Upon full execution of the License Agreement

CONTRACT NO.

REV. 3/1/2011

TYPED:

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LICENSE AGREEMENT

This License Agreement (the "License") is made and entered into by and between the County of San Bernardino, a body politic and corporate, hereinafter designated as "COUNTY" and New Cingular Wireless PCS, LLC, a Delaware limited liability company, hereinafter called "LICENSEE". The COUNTY and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

WHEREAS, the LICENSEE desires to install, operate, repair, and maintain a cellular communications facility situated on approximately 886 square feet of County-owned land at the Big Bear Landfill located at 38550 Holcomb Valley Road, Big Bear City, CA ("Site"); and,

WHEREAS, COUNTY and LICENSEE now desire to enter into a license agreement for the use of a certain portion of the County-owned land at the Site, as more specifically described in this License; and,

NOW, THEREFORE, in consideration of mutual covenants and conditions, the Parties hereto agree to the following:

In consideration of the covenants and agreements hereinafter contained being fully kept and performed, and in consideration of the benefits to be derived by each Party, COUNTY does hereby grant to LICENSEE a license for the use of that certain portion of real property, comprising approximately 886 square feet of County-owned land at the Big Bear Landfill located at 38550 Holcomb Valley Road, Big Bear City, CA, as said portion is more particularly described in Exhibit "A" (the "Premises") and Exhibit "B" (LICENSEE's Authorized Equipment), attached hereto and made a part hereof.

COVENANTS AND AGREEMENTS:

1. **USE:** The COUNTY grants a license for the use of the Premises to LICENSEE for the purpose of installing, operating, repairing and maintaining a cellular communications facility containing a 100' monopole with mono-pine tree coverings with a total of twelve (12) panel antennas (four per sector), thirty-six (36) remote radio units (RRU) (12 per sector), one (1) four-foot diameter microwave (MW) antenna, one (1) walk in telco cabinet; one (1) Generac 27 KW DC Generator with 180 gallon diesel tank mounted on containment slab; one (1) step-down transformer; one (1) fiber cabinet; one (1) GPS antenna and an 8' tall wrought iron perimeter fence (collectively, the "LICENSEE's Authorized Equipment") which equipment is more particularly described on Exhibit "B" attached hereto and made a part hereof.

This License and the rights herein granted to LICENSEE shall be subject to the paramount legal duties and obligations of COUNTY including, but not limited to, the right to temporarily enter and cross the Premises with any and all equipment necessary in the preservation of the surrounding County-owned property without liability for any damages to LICENSEE's Authorized Equipment. COUNTY shall give reasonable advance notice either verbally or in writing of its intent to enter and cross the Premises.

2. **TERM:** The initial term of this License shall be five (5) years commencing upon full execution of this License, as evidenced by the date that the last of the parties executes this License ("Commencement Date") and expiring one day prior to the fifth (5th) anniversary of the Commencement Date (the "Initial Term"). The Initial Term, together with any Extended Terms are referred to collectively as the "Term".

3. **OPTION TO EXTEND TERM:**

A. COUNTY gives LICENSEE the option to extend the term of the License on the same provisions and conditions, except for the Annual License Fee for three (3) five (5) year periods ("Extended Terms") following expiration of the Initial Term, provided that at the time of exercise of the applicable option, LICENSEE is not in default with respect to any of the terms, covenants or conditions to be observed or performed by

LICENSEE hereunder beyond any applicable notice and cure period, and provided LICENSEE gives written notice of exercise of the option to COUNTY at least one (1) year, but not more than eighteen (18) months, prior to the expiration of the Initial Term or the then existing Extended Term. Said options shall be deemed to be independent and consecutive, with LICENSEE's right to exercise the second of said options terminating upon LICENSEE's failure to exercise the first option. The Annual License Fee for the first (1st) year of each Extended Term shall be re-established in accordance with the market rate for comparable properties in the Big Bear City area, County of San Bernardino (with the Annual License Fee for the remainder of the Extended Term to be subject to the annual percentage increase in Paragraph 5), provided that if the parties are unable to agree on the re-established Annual License Fee for the first year of an Extended Term, such fee shall be determined in accordance with Section 3.B. below.

B. If the Parties are unable to agree on the Annual License Fee for the first (1st) year of any Extended Term within five (5) months of LICENSEE's exercise of the subject option, the subject Annual License Fee shall be determined through arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. If the arbitration-determined Annual License Fee increases the Annual License Fee payable for the first (1st) year of an Extended Term by an amount equal to more than six percent (6%) over the Annual License Fee payable for the year immediately preceding the expiration of the Initial Term or the then current Extended Term, the LICENSEE shall have the right to terminate this License within thirty (30) days after the date the arbitrator issues its formal Annual License Fee determination by providing written notice of termination to COUNTY within said thirty (30) days. If the arbitration-determined Annual License Fee reduces the Annual License Fee payable for the first year of an Extended Term by an amount equal to more than six percent (6%) below the Annual License Fee payable for the year immediately preceding the expiration of the Initial Term or the then current Extended Term, the COUNTY shall have the right to terminate this License within thirty (30) days after the date the arbitrator issues its formal Annual License Fee determination by providing written notice of termination to LICENSEE within said thirty (30) days. If neither parties timely exercises its respective right to terminate the License under this paragraph, then the Annual License Fee for the first year of an Extended Term shall be the arbitration-determined Annual License Fee. The COUNTY's RESD Director shall be authorized to provide such termination notice on behalf of the COUNTY. If the subject Annual License Fee is pending determination by the arbitration process at the expiration of the Initial Term or the then current Extended Term, as of the commencement date of the subject Extended Term, LICENSEE shall pay the Annual License Fee in the amount due for the year immediately preceding expiration of the Initial Term or the then current Extended Term. Upon determination of the subject Annual License Fee through arbitration, and provided that this License is not terminated pursuant to this paragraph, LICENSEE shall, within forty-five (45) days after the date the arbitrator issues its formal Annual License Fee determination, pay to COUNTY any deficiency between the Annual License Fee paid and the arbitration-determined Annual License Fee for the period from the commencement of an Extended Term through the date the arbitrator issues its formal Annual License Fee determination. In the event that either party terminates the License in accordance with this paragraph, then no deficiency shall be payable to COUNTY and no refunds shall be due to LICENSEE for the period after the commencement of an Extended Term through the date the arbitrator issues its formal Annual License Fee determination.

4. **FEES:**

A. LICENSEE shall pay to COUNTY an annual license fee ("Annual License Fee") in the amount of Twenty-Four Thousand and 00/100 Dollars (\$24,000.00) payable in advance on the Commencement Date and each subsequent Annual License Fee shall be payable on each subsequent anniversary of the Commencement Date continuing throughout the Term which shall be adjusted annually in accordance with Paragraph 5 of this License.

B. If any Annual License Fee or other amounts are not paid when due and payable, LICENSEE shall pay to COUNTY an additional amount of Fifty and 00/100 Dollars (\$50.00) for each overdue Annual License Fee or other amount as an administrative processing charge. The Parties agree that this administrative charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by LICENSEE. Acceptance of any administrative charge shall not constitute a waiver of LICENSEE's default with respect to the overdue Annual License Fee or amount or prevent COUNTY from exercising any of

the other rights and remedies available to COUNTY. If the Annual License Fee and other amounts are not paid when due, then such overdue amounts shall bear simple interest from the date due at the rate of one and one-half percent (1½%) per month until paid in full.

5. **FEE ADJUSTMENTS:** The Annual License Fee initially established at Twenty-Four Thousand and 00/100 Dollars (\$24,000.00) per year shall be subject to an increase on each anniversary of the Commencement Date ("Adjustment Date(s)") during the Term in the amount of three and one half percent (3.5%) over the Annual License Fee immediately preceding the Adjustment Date.

6. **CONDITION OF PREMISES:** The Premises are provided to LICENSEE in its AS-IS condition without any representations or warranties whatsoever, including but not limited to its condition or suitability for LICENSEE's Authorized Equipment or LICENSEE's intended use and LICENSEE expressly acknowledges that COUNTY shall not be in any way liable for and LICENSEE assumes all risk of injury, damage, or loss in its use of the Premises, including without limitation, any risk of injury, damage, or loss regardless of cause to LICENSEE, LICENSEE's Authorized Equipment, or LICENSEE's personal property located on the Premises. Upon the commencement of LICENSEE's use of the Premises, the same shall conclusively be deemed that LICENSEE finds the Premises fit and proper for the purposes for which LICENSEE shall use the Premises.

7. **ASSIGNMENT:** This License shall not be assigned nor shall the Premises be subleased by LICENSEE without the express written approval of the COUNTY, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, LICENSEE shall have the right to assign the License or sublease the Premises without the prior approval of the COUNTY but with prior notice to the COUNTY if the License is assigned or the Premises is subleased to: (a) an affiliate of LICENSEE (defined as entities that directly or indirectly control, are controlled by, or under common control with LICENSEE, (b) any entity with at least ten (10) years of experience as an operator or manager of wireless communications facilities (e.g. Verizon, T-Mobile, Sprint, American Towers, or Crown Castle), and has a net worth of at least Twenty Million Dollars (\$20,000,000) at the time of assignment or sublease, or (c) any entity that acquires all or substantially all of the LICENSEE's assets in the market as defined by the Federal Communications Commission in which the Premises is located (collectively, "Permitted Transfers"). LICENSEE shall be released from all future performance, liabilities and obligations under this License for a Permitted Transfer and a County approved assignment, but not a sublease, provided LICENSEE complies with County's reasonable conditions for an assignment requiring County's approval, including a non-release of LICENSEE's liabilities and obligations under this License to the extent such non-release is reasonable under the circumstances, and further provided that such transferee assumes in writing all of LICENSEE's liabilities and obligations under this License. Any assignment or sublease, other than Permitted Transfers, without the prior written approval of the COUNTY shall be null and void.

8. **COUNTY'S ACCESS TO PREMISES:**

A. COUNTY, or a duly authorized representative of the COUNTY, reserves the right to enter upon the Premises at any reasonable time for the purpose of inspecting the Premises for conformance to this License and for carrying out the functions and purposes of the COUNTY and COUNTY will not be liable for any damages to LICENSEE's Authorized Equipment as a result of exercising its rights pursuant to this paragraph.

B. COUNTY's activities at the Site shall take precedence at all times, and when any work or activity must be performed to carry out the functions and purposes of the COUNTY, LICENSEE must allow the same to be done. COUNTY shall give LICENSEE reasonable notice of impending activities whenever possible.

9. **MAINTENANCE/REPAIRS:**

A. The COUNTY's existing maintenance roads and/or driveways will be available for normal and routine maintenance of the LICENSEE's Authorized Equipment by LICENSEE. Maintenance and inspection of LICENSEE's Authorized Equipment will be the sole responsibility of the LICENSEE and regular inspections are required as necessary to ensure that LICENSEE's Authorized Equipment are maintained in a good and safe

condition. Any damage to COUNTY's property (including but not limited to the existing maintenance roads and/or driveways) or property of others resulting from said maintenance activities by LICENSEE or its employees, agents, contractors, and invitees shall be the sole responsibility of LICENSEE.

B. LICENSEE shall have twenty (20) days from the creation of the need to maintain and repair to perform its obligation to maintain and repair under this paragraph 9, except that LICENSEE shall perform its obligations immediately, if the nature of the problem presents a threat to life, health, or safety of persons or destruction of property ("Emergency Repairs"). If LICENSEE does not perform its obligations within the time limitations in this paragraph 9, and fails to do so within the cure periods set forth in Paragraph 13, COUNTY can, upon written notice to the LICENSEE, perform the obligations and has the right to be reimbursed for the sum it actually expends (including charges for COUNTY's equipment and personnel) in the performance of LICENSEE's obligations.

10. **HAZARDOUS MATERIALS:**

A. Definition. For purposes of this License, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq, all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. LICENSEE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises of any hazardous substance, or the transportation to or from the Premises of any hazardous substance.

C. LICENSEE shall be solely responsible, at its cost, for any violation of applicable Hazardous Substances laws that is caused by the LICENSEE or its employees, agents, contractors and invitees. LICENSEE shall further indemnify (with counsel reasonably acceptable to COUNTY), protect, defend and hold COUNTY and their officers, agents, employees, and volunteers and the Premises and the Site, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substances present on, used, manufactured, handled, generated, stored, treated, discharged, released, buried, disposed, or brought onto the Premises or the Site by or for LICENSEE, its employees, agents, contractors, invitees, or by anyone under LICENSEE's control. LICENSEE's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by LICENSEE or by anyone under LICENSEE's control, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this License. No

termination, cancellation or release agreement entered into by COUNTY and LICENSEE shall release LICENSEE from its obligations under this License with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

D. LICENSEE shall comply with all applicable laws, statutes, regulations, and orders concerning Hazardous Substances, as defined in subparagraph 11A, relating to LICENSEE's Authorized Equipment on the Premises.

E. LICENSEE shall immediately inform COUNTY of any release of Hazardous Substances caused by LICENSEE or its employees, agents, contractors and invitees. Upon reasonable notice to LICENSEE, COUNTY may inspect LICENSEE's Authorized Equipment on the Premises to determine if any release of Hazardous Substances has occurred, or may occur, from or related to LICENSEE's Authorized Equipment. In removing or modifying LICENSEE's Authorized Equipment as provided in this License, LICENSEE shall also remove all residue of Hazardous Substances related thereto.

11. **UTILITIES:** COUNTY shall have no obligation to furnish to the Premises any electric, gas, water, trash, and or any other utilities.

12. **IMPROVEMENTS:** LICENSEE shall not make any improvements or alterations to the Premises or LICENSEE's Authorized Equipment after its initial installation listed on Exhibit "B" without COUNTY's prior written consent, COUNTY's consent not to be unreasonably withheld, conditioned or delayed. All improvements to the Premises that are directly related to installing, operating and maintaining the LICENSEE's Authorized Equipment shall remain the property of LICENSEE. Upon termination of this License, the LICENSEE shall have the right to remove improvements directly related to operating and maintaining the LICENSEE's Authorized Equipment, which removal shall be completed on or before the expiration or earlier termination of this License. If LICENSEE is, after using diligent efforts, unable to complete its removal on or before the expiration of this License, LICENSEE shall, upon written notice to COUNTY received prior to the expiration or earlier termination of this License, have an additional period of time for the sole purpose of removing LICENSEE's Authorized Equipment not to exceed sixty (60) days after the expiration or earlier termination of this License to complete its removal ("Extended Removal Period"), provided that during any Extended Removal Period, LICENSEE shall pay the Annual License Fee set forth in Paragraph 14. If LICENSEE does not remove LICENSEE's Authorized Equipment on or before the expiration or earlier termination of this License or the Extended Removal Period, if elected by LICENSEE, then COUNTY shall either require LICENSEE, at LICENSEE's expense, to remove LICENSEE's Authorized Equipment, or elect to retake possession of the Premises together with LICENSEE's Authorized Equipment which shall thereupon become the property of the COUNTY without compensation to LICENSEE. The Premises shall be returned to COUNTY in as good a condition and repair as it was initially received by LICENSEE, reasonable wear and tear excepted, and LICENSEE shall repair any damage to the Premises, at the Site, or on adjacent County-owned property caused by LICENSEE's removal of LICENSEE's Authorized Equipment or LICENSEE's use of the Premises.

13. **DEFAULT AND RIGHT TO TERMINATE:**

A. If there should be any default in payment by LICENSEE of the Annual License Fee provided herein or if LICENSEE fails to continuously operate the LICENSEE's Authorized Equipment throughout the Term of the License, including any extensions thereof or abandons LICENSEE's Authorized Equipment, COUNTY may give LICENSEE written notice of such default. This License will not be terminated if: (a) within fifteen (15) days after receipt of such written notice the LICENSEE shall cure the default or breach by payment of the Annual License Fee or any recurring payments stipulated in this License; or (b) within thirty (30) days after receipt of such written notice the LICENSEE shall cure the default or breach by payment of any other monetary payments which may be required under the provisions of this License.

B. Except for any defaults arising from Emergency Repairs, which must be cured immediately but not more than ten (10) days after written notice from COUNTY, and any defaults of monetary payments, which must be cured pursuant to Paragraph 13.A, if LICENSEE should fail to perform, keep or observe any of the

terms, conditions or covenants as set forth in this License, COUNTY may give LICENSEE written notice to correct such condition or cure such default.; in which, the following cure periods shall apply:

(1) This License will not be terminated if within thirty (30) days after receipt of such written notice, the LICENSEE shall cure the condition or default.

(2) If such condition or default should continue for thirty (30) days after receipt of written notice of default, COUNTY may at its option elect to terminate this License. Such election to terminate shall not be construed as a waiver of any claim the COUNTY may have against LICENSEE, consistent with such termination.

(3) If, however, the nature of said default is such that more than thirty (30) days are reasonably necessary to correct or cure said default, the License shall not be terminated if LICENSEE shall have commenced the elimination of such default within thirty (30) days after receipt of such notice and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction shall be extended for such length of time as is reasonably necessary to complete such correction.

C. Reserved.

D. Upon any termination of this License, LICENSEE covenants and agrees to surrender the Premises peaceably to the COUNTY immediately upon any such termination, subject to the Extended Removal Period set forth in Paragraph 12. If LICENSEE continues to use the Premises after any termination of this License without County consent (except for the Extended Removal Period set forth in Paragraph 12), COUNTY shall have the right to pursue all available rights and remedies available at law or in equity. In the event of the failure of LICENSEE to remove LICENSEE's Authorized Equipment from the Premises pursuant to Paragraph 12, COUNTY may remove LICENSEE's Authorized Equipment and place the same in storage at the expense of LICENSEE and without liability to COUNTY for loss thereof. LICENSEE agrees to pay COUNTY within thirty (30) days of COUNTY's demand all expenses incurred in such removal, including court costs and attorney's fees and storage charges and/or COUNTY may without notice sell all or any part of said LICENSEE's Authorized Equipment at public or private sale for such prices as COUNTY may obtain, and apply the proceeds of such sale to any expense incidental to the removal and sale of said LICENSEE's Authorized Equipment, with the surplus, if any, being refunded to LICENSEE.

E. The receipt by the COUNTY of any Annual License Fee or of any other sum of money paid by LICENSEE after any default, the termination of this License for any reason, or after the giving by COUNTY of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the Term of this License, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by COUNTY to the LICENSEE prior to the receipt of any such sum of money or other consideration, unless so agreed to be in writing and signed by COUNTY. Any act of the COUNTY or its agents or employees during the Term of this License shall not be deemed to be an acceptance or a surrender of said Premises, excepting an agreement in writing signed by the COUNTY agreeing to accept such surrender.

14. **HOLDING OVER:** If the LICENSEE continues using the Premises after the expiration of the Term or after any termination of this License prior to the expiration of the Term the following shall apply: (i) if LICENSEE has provided timely notice for the Extended Removal Period, then LICENSEE shall be deemed to be holding over at the Premises for the duration of the Extended Removal Period, subject to all the provisions of this License, except, during such holdover, the Annual License Fee shall increase to an amount equal to one hundred fifty percent (150%) over the Annual License Fee immediately in effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover and either party shall have the right to give a notice of termination of said holdover effective on the expiration of the Extended Removal Period or on not less than thirty (30) days prior written notice thereafter; and (ii) if LICENSEE has not exercised or has not timely exercised its option for the Extended Removal Period and if said holdover is with the consent of the COUNTY, then LICENSEE shall be deemed to be holding the Premises on a month-to-month basis subject to all the provisions of this License, except, during such holdover, the Annual License Fee shall increase to an amount equal to one hundred fifty percent (150%) over the Annual License Fee immediately in

effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover, and either party shall have the right to give a notice of termination of said holdover on not less than thirty (30) days prior written notice.

15. **LICENSES AND CERTIFICATIONS:** LICENSEE agrees that it will acquire and maintain those certifications, licenses, approvals and permits required by any Federal, State or local jurisdiction or authority for carrying out the purpose of this License and LICENSEE shall comply with all laws and regulations and industry standard safety measures for the access and use of the LICENSEE's Authorized Equipment on the Premises.

16. **INDEMNIFICATION:** The LICENSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this License from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. The LICENSEE's indemnification obligation does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

17. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:**

A. COUNTY is a self-insured public entity for purposes of professional liability, general liability and workers' compensation.

B. The LICENSEE agrees to provide insurance set forth in accordance with the requirements herein. The type(s) of insurance required is determined by the scope of the License hereunder. Without in anyway affecting the indemnity herein provided and in support thereof, the LICENSEE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

(1) Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with Two Hundred Fifty Thousand Dollars (\$250,000.00) per accident, per disease per employee, per disease policy limits covering all persons including volunteers providing services on behalf of the LICENSEE.

(2) Commercial General Liability Insurance – The LICENSEE shall carry Commercial General Liability Insurance covering all operations performed by or on behalf of the LICENSEE providing coverage for bodily injury and property damage with a combined single limit of One Million Dollars (\$1,000,000.00), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000.00 general aggregate limit.

(3) Commercial Property Insurance Providing all risk coverage for the premises, building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost. Licensee may self-insure this risk.

(4) Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of One Million Dollars (\$1,000,000.00) for bodily injury and property damage, per accident.

(5) Umbrella/Excess Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury. The coverage shall also apply to automobile liability. Licensee may use any combination of primary and excess insurance to meet the total limits required.

C. If LICENSEE performs any construction of the Premises on behalf of the COUNTY, LICENSEE shall also procure and maintain coverages as follows:

(1) For construction contracts for projects over One Million Dollars (\$1,000,000.00) and less than Three Million Dollars (\$3,000,000.00) require limits of Three Million Dollars per occurrence and in the aggregate in General Liability and Auto Liability per accident coverage.

(2) For construction contracts for projects over Three Million Dollars (\$3,000,000.00) and less than Five Million Dollars (\$5,000,000.00) require limits of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate in General Liability and Auto Liability per accident coverage.

(3) For construction contracts for projects over Five Million Dollars (\$5,000,000.00) and less than Ten Million Dollars (\$10,000,000.00) require limits of Ten Million Dollars (\$10,000,000.00) per occurrence and in the aggregate in General Liability and Auto Liability per accident coverage.

(4) Subcontractor Insurance Requirements. The LICENSEE agrees endeavor to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this License to provide insurance covering the contracted operation with the basic requirements for all contracts in B1 and the insurance sections for all contracts in B2, (including waiver of subrogation rights) and including the COUNTY as an additional insured. The LICENSEE agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

(5) Course of Construction/Installation (Builder's Risk) Property insurance or self-insurance providing all risk, including theft coverage for all property and materials to be used on the project.

(6) Self-Insurance. Notwithstanding the forgoing, LICENSEE may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event LICENSEE elects to self-insure its obligation under this Agreement to include LICENSOR as an additional insured, the following conditions apply: (i) LICENSOR shall promptly and no later than thirty (30) days after notice thereof provide LICENSEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide LICENSEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) LICENSOR shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of LICENSEE; and (iii) LICENSOR shall fully cooperate with LICENSEE in the defense of the claim, demand, lawsuit, or the like.

D. Additional Insured – The required commercial general liability and auto liability insurance policies shall contain endorsements including the COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities caused, in whole or in part, by Licensee's operations under this License hereunder. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010. LICENSOR's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by LICENSEE, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of LICENSOR, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of LICENSOR, its employees, agents or independent contractors; and, (iii) not exceed LICENSEE's indemnification obligation under this Agreement, if any.

E. Waiver of Subrogation Rights – The LICENSEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the

LICENSEE waiving the right of subrogation prior to a loss or claim. The LICENSEE hereby waives all rights of subrogation against the COUNTY.

F. Policies Primary and Non-Contributory – The required commercial general liability, auto liability, and excess liability insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

G. Severability of Interests – The LICENSEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the LICENSEE and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

H. Proof of Coverage – The LICENSEE shall furnish Certificates of Insurance to the COUNTY's Real Estate Services Department (RESA) administering the License evidencing the insurance coverage, including required endorsements, prior to the commencement of performance of services hereunder. LICENSEE shall provide at least thirty (30) days written notice to RESA of cancellation or nonrenewal of any required coverage that is not replaced. LICENSEE shall maintain such insurance from the time LICENSEE commences use under the License hereunder until the end of the period of the License. Within thirty (30) days of the commencement of this License, and within thirty (30) days of County's written request anytime thereafter, the LICENSEE shall furnish such Certificates of Insurance as required in this Subsection 17(H).

I. Acceptability of Insurance Carrier – Unless otherwise approved by the COUNTY Department of Risk Management, insurance shall be written by insurers eligible to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

J. Insurance Review – Insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever the COUNTY's Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, and only one time during the Initial Term and one time during each Extended Term, the COUNTY's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this License. LICENSEE agrees to execute any such amendment within sixty (60) days of acceptance of the amended terms.

Any failure, actual or alleged, on the part of RESA or COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of RESA or the COUNTY.

K. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of Ten Thousand Dollars (\$10,000.00) shall be declared to COUNTY's Risk Management Department.

L. Failure to Procure Insurance. All insurance required must be maintained in force at all times by LICENSEE. Failure to maintain said insurance, due to expiration, cancellation, etc., shall be cause for the COUNTY to give notice to immediately suspend all LICENSEE's business activities on the Premises. Failure to reinstate said insurance within the thirty (30) days of notice to do so shall be cause for termination and for forfeiture of this License, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by LICENSEE to COUNTY upon demand but only for the pro rata period of non-compliance.

M. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with LICENSEE in LICENSEE's operations.

The LICENSEE agrees endeavor to require all parties or subcontractors, or others it hires or contracts with related to the use of this License to provide insurance covering such use with the basic requirements and including the COUNTY as additional insured. LICENSEE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

18. **TAXES, ASSESSMENTS AND LICENSES:** LICENSEE shall pay before delinquency any and all taxes, if any, assessments, fees, or charges, including possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures, if any, installed or belonging to LICENSEE and located within the Premises. LICENSEE shall also pay all license or permit fees necessary or required by law for the conduct of its operation and/or in accordance with Section 107 of the California Revenue and Taxation Code. LICENSEE recognizes and understands that this License may create a possessory interest subject to property taxation and that the LICENSEE may be subject to the payment of property taxes levied on such interest, unless the Parties otherwise agree in writing prior to the start of construction or installation.

19. **BUILDING AND SAFETY REQUIREMENTS:** All LICENSEE's activities under this license must conform to all applicable rules, regulations, laws, ordinances, codes, statutes or orders of any governmental authority, Federal, State or local lawfully exercising authority over LICENSEE's operations. In the event the LICENSEE's use of the Premises is in violation of any regulations, ordinances, statutes or orders, the LICENSEE shall remove or modify the LICENSEE's Authorized Equipment to conform with the applicable regulations within thirty (30) days of receipt of written notice to do so from the COUNTY.

20. **GENERAL COVENANTS AND AGREEMENTS:**

A. The COUNTY may revise, modify, or add provisions to the License as may be required by COUNTY if COUNTY determines, in its reasonable discretion, that such revisions, modifications, and additions are required by applicable laws or regulations for COUNTY to meet the COUNTY's obligations and purposes at the Site so long as such revisions, modifications, or additions do not increase the Annual License Fee as set forth herein, do not materially increase any of LICENSEE's other obligations in this License, and do not materially interfere with LICENSEE's use of the Premises. COUNTY shall provide not less than sixty (60) days prior written notice of any such revisions, modifications, or additions ("Amendment Notice"), and if LICENSEE objects to such required revisions, modifications, and additions, LICENSEE shall notify COUNTY in writing within thirty (30) days after receipt of the Amendment Notice; in which case, either party shall have the right to terminate this License without further obligation (other those that have accrued or survive the expiration or earlier termination of this License) by providing a written termination notice to the other within thirty (30) days after LICENSEE's written objection to the Amendment Notice. The COUNTY's RESD Director shall be authorized to provide such termination notice on behalf of the COUNTY. Any failure by LICENSEE to respond to the Amendment Notice within the time period specified in this paragraph shall be deemed a waiver of its right to terminate pursuant to this paragraph. If the License is not terminated in accordance with this paragraph, such revisions; modifications, or provisions to the License shall be set forth in an amendment to the License, which shall be promptly executed by both Parties. LICENSEE agrees not to use said Premises or the Site, or any part thereof for any purpose in violation of valid applicable laws or ordinances.

B. No political signs shall be permitted at the Site.

C. Uses granted to LICENSEE under this License are valid only to the extent of the COUNTY's existing rights and may be subject to other existing easements and encumbrances.

D. This License is valid only to the extent of COUNTY jurisdiction. Permits required by other interested agencies shall be the responsibility of the LICENSEE.

E. If the LICENSEE should refuse or neglect to comply with the provisions of the License, the COUNTY may have such provisions carried out by others at the expense of the LICENSEE. All the terms, covenants and conditions set forth herein are to be strictly complied with by the LICENSEE.

F. Notwithstanding anything to the contrary in this License, LICENSEE and COUNTY each waives any claims that each may have against the other with respect to loss of profits and consequential, incidental, punitive, or special damages, however caused, based on any theory of liability.

21. **TERMINATION:** LICENSEE may terminate this License if the LICENSEE cannot secure, loses or forfeits any permits or licenses necessary to use or operate the LICENSEE's Authorized Equipment by giving the COUNTY 180 days' prior written notice of any termination pursuant to this paragraph. LICENSEE shall perform all necessary removals in accordance with Paragraph 12 of this License. In the event that LICENSEE fails to remove all of LICENSEE's Authorized Equipment on or before the expiration of the License: (i) if LICENSEE has provided timely notice for the Extended Removal Period, then LICENSEE shall be deemed to be holding over at the Premises for the duration of the Extended Removal Period, subject to all the provisions of this License, except, during such holdover, the Annual License Fee shall increase to an amount equal to one hundred fifty percent (150%) over the Annual License Fee immediately in effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover and either party shall have the right to give a notice of termination of said holdover effective on the expiration of the Extended Removal Period or on not less than thirty (30) days prior written notice thereafter; and (ii) if LICENSEE has not exercised or has not timely exercised its option for the Extended Removal Period and if said holdover is with the consent of the COUNTY, then LICENSEE shall be deemed to be holding over at the Premises on a month-to-month basis, subject to all the provisions of this License, except, during such holdover, the Annual License Fee shall increase to an amount equal to one hundred fifty percent (150%) over the Annual License Fee immediately in effect prior to the initiation of holdover, which shall be pro-rated and payable monthly during any month-to-month holdover and either party shall have the right to give a notice of termination of said holdover on not less than thirty (30) days prior written notice.

22. **INCORPORATION OF PRIOR AGREEMENT:** This License contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this License, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

23. **WAIVERS:** No waiver by either Party of any provisions of this License shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either Party of the same or any other provisions.

24. **AMENDMENTS:** No provision of this License may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successor in interest, expressing by its terms an intention to modify this License.

25. **SUCCESSORS:** This License shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto.

26. **PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either Party shall be deemed to be both covenants and conditions.

27. **CONSENT:** Except as otherwise expressly specified, whenever consent or approval of either Party is required, that Party shall not unreasonably withhold, condition or delay such consent or approval.

28. **EXHIBITS:** All exhibits referred to are attached to this License and incorporated by reference.

29. **LAW:** This license shall be construed and interpreted in accordance with the laws of the State of California.

30. **CAPTIONS AND COVER PAGE:** The paragraph captions and the cover page of this License shall have no effect on its interpretations.

31. **SEVERANCE:** If any provision of this License is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this License, and all such other provisions shall remain in full force and effect provided, however, that the purpose of the License is not frustrated. It is the intention of the Parties hereto that if any provision of this License is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

32. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally, delivered by a reputable overnight courier service, or sent by United States, postage prepaid, first-class mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed delivered and effective upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is delivered by a reputable overnight courier service or sent by postage pre-paid, United States first-class mail, certified or registered, return receipt requested.

COUNTY's address: County of San Bernardino
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

LICENSEE's address: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: Site CSL02570; Cell Site Name: Holcomb Valley (CA)
Fixed Asset #: 13024084
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: Site CSL02570; Cell Site Name: Holcomb Valley (CA)
Fixed Asset #: 13024084
208 S. Akard Street
Dallas, TX 75202-4206

33. **SURVIVAL:** The obligations of the Parties which, by their nature, continue beyond the Term of this License, will survive the termination of this License.

34. **VENUE:** The Parties acknowledge and agree that this License was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any Party to this License will be in the appropriate Federal or State court, in the County of San Bernardino. Each Party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this License, the Parties hereto agree to use their reasonable efforts to obtain a change of venue to the State court in the County of San Bernardino. This License shall be construed and interpreted in accordance with the laws of the State of California.

35. **ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a Party hereto and payable under Paragraph 16, INDEMNIFICATION and those arising from

COUNTY's collection efforts (whether prior to or as a result of a court action) due to non-payment of the fee or any other amounts overdue under this License.

36. **FORMER COUNTY OFFICIALS:** LICENSEE agrees to provide or has already provided information on Former COUNTY Administrative Officials (as defined below) who are employed by or represent LICENSEE. The information to be provided will include a list of Former COUNTY Administrative Officials who terminated COUNTY employment within the last five (5) years and who are now officers, principals, partners, associates or members of or represent LICENSEE'S business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of LICENSEE. For purposes of this provision, "COUNTY Administrative Official" is defined as a member of the Board of Supervisors or such officer's staff, COUNTY Administrative Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See Exhibit "C", List of Former County Administrative Officials.)

For the purposes of this License only, the defined term "Former COUNTY Administrative Officials" who are employed by or represent LICENSEE shall include only those who have been involved in the direct negotiation of this License. To the best of its knowledge, LICENSEE is not aware that there are any such Former COUNTY Administrative Officials.

37. **MATERIAL MISREPRESENTATION:** If during the course of the Term of this License, COUNTY demonstrates with conclusive evidence that LICENSEE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided by LICENSEE with respect to Section 36 of this License, this License may be terminated by written notice by the County to the LICENSEE. If this License is terminated according to this provision, then the COUNTY is entitled to pursue any available legal remedies.

38. **INTERPRETATIONS:** As this License was jointly prepared by both Parties, the language in all parts of this License shall be construed, in all cases, according to its fair meaning, and not for or against either Party hereto.

39. **DISCLOSURE:** All information received by the COUNTY from any source concerning this License, including the License itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code section 6250 et seq. (the "Public Records Act"). LICENSEE understands that although all materials received by the COUNTY in connection with this License are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a LICENSEE has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the LICENSEE of the request and shall thereafter disclose the requested information unless the LICENSEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. LICENSEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify LICENSEE of any such disclosure request and/or releases any information concerning the contract received from the LICENSEE or any other source.

40. **BROKER'S COMMISSIONS:** LICENSEE is solely responsible for the payment of any commissions to any broker who has negotiated or otherwise provided services on behalf of Licensee in connection with this License.

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41. **AUTHORIZED SIGNATORS:** Both Parties to this License represent that the signators executing this document are fully authorized to enter into this License.

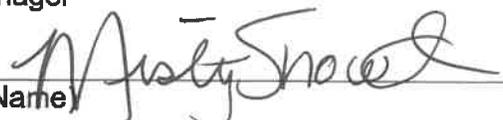
END OF LICENSE.

COUNTY OF SAN BERNARDINO, a body politic and corporate

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

By: 
Curt Hagman, Chairman
Board of Supervisors

By: AT&T Mobility Corporation
Its: Manager

By: 
(Name)

Title: Area manager

Date: JUN 08 2021

Date: 2/9/21

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD

Address: 1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

LYNNA MONELL, Clerk of the Board of Supervisors

By: 
Deputy

Date: JUN 08 2021

Approved as to Legal Form:

MICHELLE D. BLAKEMORE, County Counsel
San Bernardino County, California

By: 
Agnes Cheng, Deputy County Counsel

Date: 1/6/2021

THE FOLLOWING PAGES T-1 THROUGH T-2, F1, A-1 THROUGH A-3, D-1 THROUGH D-5, E-1 THROUGH E-2 AND G-1 THROUGH G-2 REPRESENT EXHIBIT "A" FOR THE PURPOSES OF THIS LICENSE AGREEMENT