

AGENDA REPORT

Ordinance: Approve and Authorize Executive Director to Execute *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC for a Site on the Rooftop Area at Hangar 3 for a Term of Five Years at an Initial License Fee of \$11,675 Per Month. **(Aviation)**

MEETING DATE: 11/30/2017

AMOUNT: \$744,000 Five-Year License Fee Revenue

PARTIES INVOLVED: **New Cingular Wireless, PCS, LLC doing business as AT&T Mobility Corporation LLC**, Brookhaven, Georgia
John Donovan, President and CEO

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

This action would adopt an Ordinance for *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC doing business as AT&T Mobility Corporation LLC to (i) extend the term of the existing *Telecommunications License Agreement* for five years from January 1, 2018 through December 31, 2022, generating in excess of \$744,000 in License Fee Revenues over the term of the extension; and (ii) authorize the Executive Director to execute *Amendment No. 1* and such additional documents necessary to effectuate the approval, thereby providing the continued operation and delivery of wireless telecommunications services at the North Field of Oakland International Airport.

BACKGROUND

At its meeting of November 1, 2012, the Board adopted Ordinance No. 4209, approving a *Telecommunications License Agreement (TLA)* with New Cingular Wireless PCS, LLC doing business as AT&T Mobility Corporation LLC ("New Cingular") to provide telecommunications services from a site on the Hangar 3 rooftop area (Building L-310 East). The term of the *TLA* commenced on January 1, 2013, and expires on December 31, 2017. The current license fee is \$10,590 per month (base fee is \$10,140 per month plus nine antennas at \$50 per antenna).

New Cingular proposes to continue its occupancy and operations of equipment and antennas at Hangar 3, for an additional five-year period.

The *TLA* does not include an option to extend the term; however, the *TLA* does allow written requests by New Cingular to extend, when submitted to the Port between 180 days to 90 days prior to the December 31, 2017 expiration date of *TLA*. New Cingular provided its written request for extending the term of the *TLA* with the proposed *Amendment No. 1*.

ANALYSIS

The proposed *Amendment No. 1* allows New Cingular's continued use of rooftop area at Hangar 3 to provide cellular phone and data transfer services for the benefit of Airport staff, passengers, customers, tenants and the public in the vicinity of the North Field.

The specific terms and conditions of the proposed *Amendment No. 1* are as follows:

Tenant: New Cingular Wireless PCS, LLC, doing business as AT&T Mobility Corporation LLC.

Premises: A portion of rooftop area at Building L-310 (Hangar 3) for antenna operation plus 108 square feet of ground level space for supporting equipment and cabinets.

Use: Wireless telecommunications services provider.

Extended Term: Five years commencing on January 1, 2018 and expiring on December 31, 2022.

Throughout the Extended Term, Port (upon delivering 180 day-written notice to Tenant), and at its sole option and discretion, has the right to terminate and cancel the *TLA*. Port's termination or cancellation of the *TLA*, does not create an obligation of compensation or relocation assistance of any kind.

Throughout the Extended Term, Tenant (upon delivering a 30-day written notice to Port) may, with cause, terminate the *TLA* in the event of failing to obtain, or loses any necessary permits or governmental approvals that are necessary to operate. In that event, no early termination fee is required.

If Tenant (upon delivering a 180-day written notice) may, without cause, terminates the *TLA* after Tenant determines in its best business judgment that the premises is no longer appropriate for providing wireless telecommunications services, the Tenant shall pay to the Port a termination fee that is equal to three-times the Monthly License Fee in effect.



License Fee: The Monthly License Fee is a combination of a Fixed Base Fee of \$11,000 plus a \$75 Per-Antenna Fee:

- Base Fee: \$11,000.00 per month
 - Per-Antenna Fee is \$75 each
for 9 antennas at Hangar 3: \$ 675.00 per month
- Monthly License Fee Total: \$11,675.00 per month

Throughout the Extended Term, the Monthly Base Fee will adjust annually in accordance with measured changes in the Consumer Price Index (CPI) Urban Wage Earners and Clerical Workers, All Items for the San Francisco – Oakland – San Jose Metropolitan Area, or, a minimum three percent (3%) increase, whichever is greater. The monthly per-antenna fee of \$75 will be unchanged throughout the Extended Term.

Revenue Streams for AT&T Mobility at Hangar 3 during Extended Term of <i>Amendment No. 1</i>						
	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022	5-year total
License Fees	\$ 140,000.00	\$ 144,780.00	\$ 148,632.00	\$ 153,096.00	\$ 157,680.00	\$ 744,188.00

Assumptions:

- 1) Annual License Fees in CY 2018 is calculated at 140,000.00
- 2) Annual License Fees increase at the higher of: 3% minimum, or per CPI on rent adjustment dates each year (January 1st)

Performance

Deposit: The existing Performance Deposit will be increased to Forty Thousand Dollars (\$40,000.00) and is based on the estimated Monthly License Fee in effect at the expiration of the Extended Term – rounded up to the next highest thousand dollars – and remains fixed throughout the Extended Term. This approach will enable New Cingular to satisfy its Performance Deposit requirement with a single increase, eliminating annual increases that are burdensome and costly to administer.

Maintenance and Repair:

Tenant shall be responsible for routine and non-routine maintenance, security, repair and replacement services and activities to its installed equipment, cabinets, antennas, and related infrastructure.

BUDGET & STAFFING

Approval of the proposed *Amendment No. 1*, will generate an additional \$4,740 in License Fee Revenues in FY2017/2018 above what was included in the approved Operating Budget. Over the five-year Extended Term, the proposed *Amendment No. 1* will generate a minimum of

\$744,000 in License Fee revenues (including annual adjustments). There will be no staffing impact resulting from the requested action.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The proposed *Amendment No. 1* is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan

(<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

Goal A: Create Sustainable Economic Growth for the Port and Beyond

- Goal A: Objective 1: Affirm Port identity as a public enterprise
- Goal A: Objective 2: Maximize use of existing public assets

Goal B: Maintain and Aggressively Grow Core Businesses

- Goal B: Objective 1: Retain existing customers and tenants
- Goal B: Objective 5: Enhance customer services (i.e., market intelligence, technical knowledge, strategic advice and problem solving).

LIVING WAGE

Living Wage Requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply as the tenant does not employ 21 or more employees working at the Premises. However, the tenant will be required to certify that should Living Wage obligations become applicable, the tenant shall comply with the Living Wage obligations.

ENVIRONMENTAL

The proposed *Amendment No. 1* is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) Guidelines Section 15301. Existing Facilities for renewals, extensions or amendments to leases, license and concession agreements where the premises or licensed activity was previously leased, or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. No further review of this action under CEQA is required.

GENERAL PLAN

This action does not change the use of the existing leased property, alter an existing facility, or create a new facility; therefore, a general Plan conformity pursuant to Section 727 of the Oakland City Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction project.

OPTIONS

1. Approve the proposed *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC, doing business as AT&T Mobility Corporation LLC, with the terms and conditions described in this Agenda Report, and authorize the Executive Director to execute *Amendment No. 1* and such additional documents necessary to effect the approval. This is the recommended action;
2. Approve the proposed *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC, doing business as AT&T Mobility Corporation LLC as described above, but subject to different terms and conditions than those described in this Agenda Report, which, depending on the nature of those changes, may require further negotiation; or,
3. Do not approve the proposed *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC, doing business as AT&T Mobility Corporation LLC, thereby jeopardizing the continuation of telecommunications services to Airport staff, passengers, customers, tenants and the general public, and the elimination of over \$144,000 in annual License Fee Revenues to the Port.

RECOMMENDATION

Adopt an Ordinance (i) approving the execution of *Amendment No. 1 to Telecommunications License Agreement* with New Cingular Wireless PCS, LLC, doing business as AT&T Mobility Corporation LLC to extend the term for five years from January 1, 2018, through December 31, 2022, generating over \$744,000 in License Fee Revenues; and (ii) authorizing the Executive Director to execute *Amendment No. 1* and such additional documents as necessary to effectuate the approvals, subject to the Port Attorney's approval as to form and legality.