

Folsom City Council Staff Report

MEETING DATE:	2/22/2022
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 10812 - A Resolution Authorizing the City Manager to Execute Amendment No. 1 to the Communications Site License Agreement (Contract No. 173-21 01-065) Between T-Mobile US, Inc., a Delaware Corporation, d/b/a Metro by T-Mobile (Formerly Known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) and the City of Folsom
FROM:	Parks and Recreation Department

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends the City Council approve Resolution No. 10812 - A Resolution Authorizing the City Manager to Execute Amendment No. 1 to the Communications Site License Agreement (Contract No. 173-21 01-065) Between T-Mobile US, Inc., a Delaware Corporation, d/b/a Metro by T-Mobile (Formerly Known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) and the City of Folsom.

BACKGROUND / ISSUE

The City of Folsom entered into a Communications Site License agreement with T-Mobile US, Inc. (formerly known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) dated August 28, 2001, for twenty years. The agreement was effective on January 5, 2002, commencing with the issuance of the building permit, and expiring on January 4, 2022.

T-Mobile requested a six-month extension to the current agreement and expressed a commitment to work towards a fully executed agreement effective July 5, 2022.

POLICY / RULE

A city may lease property owned, held, or controlled by it for a period not to exceed 55 years. Gov't Code section 37380.

ANALYSIS

T-Mobile is requesting a 6-month extension to the current Communications Site License Agreement with a commitment to working towards a fully executed new Site License Agreement that would be effective July 5, 2022.

FINANCIAL IMPACT

For the six-month period between January 5, 2022, through July 4, 2022, rent in the amount of \$10,836.67 (or \$1,806.11 per month) would be due to the City.

ATTACHMENT

1. Resolution No. 10812 - A Resolution Authorizing the City Manager to Execute Amendment No. 1 to the Communications Site License Agreement (Contract No. 173-21 01-065) Between T-Mobile US, Inc., a Delaware Corporation, d/b/a Metro by T-Mobile (Formerly Known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) and the City of Folsom
2. Amendment No. 1 to the Communications Site License Agreement (Contract No. 173-21 01-065) Between T-Mobile US, Inc., a Delaware Corporation, d/b/a Metro by T-Mobile (Formerly Known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) and the City of Folsom
3. Contract No. 173-21 01-065) Communications Site License Agreement

Submitted,

Lorraine Poggione,
Parks & Recreation Director

ATTACHMENT 1

RESOLUTION NO. 10812

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE COMMUNICATIONS SITE LICENSE AGREEMENT (CONTRACT NO. 173-21 01-065) BETWEEN T-MOBILE US, INC., A DELAWARE CORPORATION, D/B/A METRO BY T-MOBILE (FORMERLY KNOWN AS METROPCS CALIFORNIA/FLORIDA, INC., A DELAWARE CORPORATION, D/B/A METROPCS INC.) AND THE CITY OF FOLSOM

WHEREAS, on August 28, 2001, the City of Folsom entered into a Communications Site License Agreement with T-Mobile effective January 5, 2002; and

WHEREAS, the agreement expires on January 4, 2022; and

WHEREAS, T-Mobile has expressed a commitment to working towards a fully executed new Site License Agreement; and

WHEREAS, T-Mobile has requested a six-month extension on the existing Communications Site License Agreement; and

WHEREAS, the City will receive rent in the amount of \$10,836.67 for the six-month period; and

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Folsom hereby approves Resolution No. 10812 – A Resolution Authorizing the City Manager to Execute Amendment No. 1 to the Communications Site License Agreement (Contract No. 173-21 01-065) Between T-Mobile US, Inc., a Delaware Corporation, d/b/a Metro by T-Mobile (Formerly Known as MetroPCS California/Florida, Inc., a Delaware Corporation, d/b/a MetroPCS Inc.) and the City of Folsom.

PASSED AND ADOPTED this 22nd day of February 2022 by the following roll-call vote:

AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s):
ABSTAIN: Councilmember(s):

Kerri M. Howell, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

ATTACHMENT 2

**CITY OF FOLSOM
AMENDMENT NO. 1
TO
THE COMMUNICATIONS SITE LICENSE AGREEMENT (CONTRACT NO. 173-21 01-065)
BETWEEN METROPCS CALIFORNIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY
AND THE CITY OF FOLSOM**

The Communications Site License Agreement between MetroPCS California, LLC, a Delaware limited liability company, d/b/a Metro by T-Mobile (formerly known as MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS Inc.), ("Licensee") and the City of Folsom, a municipal corporation of the State of California ("Licensor"), dated **August 28, 2001** ("License Agreement"), is amended as follows:

Section 4. Term is hereby amended as follows:

The current term of the License Agreement expires on January 4, 2022. This License Agreement shall be extended effective January 5, 2022, and shall continue until July 4, 2022, unless otherwise terminated or renewed as set forth herein. The License Agreement may be amended or renewed with the approval of an authorized representative of each party. All amendments and renewals must be in writing and executed by both parties.

Section 5. Rent is hereby amended as follows:

For the six-month period between January 5, 2022, through July 4, 2022, rent shall be payable in the amount of a one-time payment of Ten Thousand Eight Hundred Thirty-Six and 67/100 Dollars (\$10,836.67) due on or before January 5, 2022.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No.1 to be duly executed.

Date: _____

City of Folsom,
A municipal corporation

By: Elaine Andersen, City Manager

Date: _____

MetroPCS California, LLC,
a Delaware limited liability company

By:

Approved As To Content:

Lorraine Poggione, Parks & Recreation Director

Date

Approved As To Form:

Steven Wang, City Attorney

Date

Attests:

Funding Available:

Christa Freemantle, City Clerk

Stacey Tamagni, Finance Director Date

NOTICE: SIGNATURE(S) ON BEHALF OF CONSULTANT MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of civil code section 1189 must be attached for each person executing this agreement on behalf of consultant. California Civil Section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

ATTACHMENT 3

COMMUNICATIONS SITE LICENSE AGREEMENT

THIS COMMUNICATIONS SITE LICENSE AGREEMENT ("License Agreement") dated as of Aug. 28, 2001, is made by and between **MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS Inc. ("Licensee")** whose address is 8444 Walnut Hill Lane, Suite 800, Dallas, Texas 75231 and the **CITY OF FOLSOM, a municipal corporation of the State of California ("Licensor")** whose address is 50 Natoma Street, Folsom, California 95630.

R E C I T A L S

This License Agreement is entered into based upon the following facts, circumstances and understandings:

A. Licensor owns certain real property legally described in Exhibit "A" attached hereto and commonly known as BT Collins Park, Folsom, California 95630 Assessor's Parcel Number 071-0040-136, 137 ("Licensor's Real Property"). Licensee desires to utilize a 14 foot 1 inch by 18 foot 1 inch portion of Licensor's Real Property with any necessary easements over other portions of Licensor's Real Property and/or shared use of Licensor's easements over other real property necessary for Licensee's access and utilities to the licensed area (altogether the "Premises"), as described on Exhibit "B" attached hereto. Licensor represents and warrants that it has full rights of ingress to and egress from the Premises from a public roadway.

B. Licensee is a communications carrier that desires to construct and operate a wireless communications site at the Premises as part of its communications network.

C. Licensor is willing to License the Premises to Licensee for Licensee's proposed use subject to the terms and conditions of this License Agreement.

WHEREFORE, the parties hereto agree as follows:

1. **Grant of License.** Licensor hereby licenses to Licensee the Premises for Licensee's proposed use, subject to the following terms and conditions.

2. **Permitted Uses.** The Premises may be used by Licensee for the operation of a wireless communications site. Under this License Agreement, Licensee may install, place, use, operate, repair, and maintain on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, and related equipment as described in Exhibit B for the operation of its wireless communications site at the Premises (collectively "Licensee's Facilities"). Further, Licensee has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate Licensee's Facilities and as required for Licensee's communications operations at the Premises. Once Licensee's Facilities are installed, Licensee shall be required to obtain Licensor's prior written consent to further improvements or installation of additional equipment at the Premises, except that Licensee shall be permitted, without Licensor's consent, to make enhancements, replacements, upgrades or substitutions of equipment and antennas which substantially conform to the physical specifications of the previously installed equipment

and antennas. Licensee in accordance with the terms of this Agreement and conditions of approval shall return the Premises to its original condition upon removal of Licensee's Facilities.

3. Conditions Precedent: Prior Approvals. This License Agreement is conditioned upon Licensee obtaining, prior to any construction, alteration or use, all governmental licenses, permits and approvals enabling Licensee to construct and operate wireless communications facilities on the Premises. Licensor agrees to cooperate with Licensee's reasonable requests for Licensor's signatures as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Licensor. Licensee covenants throughout the term of this Agreement, at Licensee's sole cost and expense, to comply with all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and city governments which may be applicable to Licensee's use of the Premises and Licensee's Facilities.

4. Term. The term of this License Agreement shall be five (5) years commencing with the issuance of a local governmental building permit allowing Licensee to construct Licensee's Facilities on the Premises or three (3) months from the date of full execution of this License Agreement, whichever occurs first ("Commencement Date") ("Term"). Licensee shall promptly deliver written notice to Licensor of the Commencement Date. This License Agreement shall automatically be extended for three (3) terms ("Renewal Terms") of five (5) years each for a total of twenty (20) years unless Licensee notifies Licensor in writing of Licensee's intention not to extend this License Agreement at least thirty (30) days prior to the expiration of the initial Term of five (5) years or subsequent renewal Terms.

5. Rent.

(a) During the term of this Agreement, and in the manner set forth in sub-paragraph (5b) below, Licensee shall pay to Licensor, at the address specified in Paragraph 22, Notices and Deliveries, the sum of One Thousand Dollars (\$1,000.00) per month. Rent shall be payable as indicated in Exhibit "D" attached hereto, in advance to Licensor as specified in sub-paragraph (5b) below.

(b) Rent shall be Payable in two-year increments with a three percent (3%) annual increase after the first year. The first payment of twenty-four thousand three hundred sixty dollars (\$24,360.00) will consist of \$12,000.00 for year one and \$12,360.00 for year two. Thereafter, rent shall be payable every two (2) years in advance on the anniversary of the Commencement Date as described in Exhibit "D" attached hereto.

6. Due Diligence Contingency and Pre-Commencement Date Access to Premises. Licensee shall have the right (but not the obligation) at any time following the full execution of this License Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for Licensee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Licensee's Facilities. During any Due Diligence activities or pre-construction work, Licensee shall have and maintain in full force and effect the insurance, set forth in Section 16, Insurance. Licensee will notify Licensor, at least 48 hours in advance, of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Licensor. If in the course of its Due Diligence Licensee determines that the Premises are unsuitable for Licensee's contemplated use,

then Licensee shall have the right to terminate this License Agreement prior to the Commencement Date by delivery of written notice thereof to Licensor as set forth in Section 13, Termination.

7. **Ongoing Access to Premises.** Throughout the Term and any Renewal Term of this License Agreement, Licensee shall have the right of access to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Licensee. In exercising its right of access to the Premises herein, Licensee agrees to cooperate with any reasonable security procedures utilized by Licensor at Licensor's Real Property and further agrees not to unduly disturb or interfere with the business or other activities of Licensor or of other tenants or occupants of Licensor's Real Property. Licensee will be attaching its antennas to an existing tower owned and controlled by Pacific Gas and Electric Company, a California corporation ("PG & E") and located on the Licensor's Property, as shown on Exhibit B hereto ("PG & E's Tower"). PG & E is entitled to place its towers and associated equipment on Licensor's Property pursuant to a right of way and easement agreement (the "PG & E Easement"). Licensor hereby consents to Licensee's use of PG & E's tower and easement area as contemplated in this Agreement; however such consent is contingent upon full compliance with the terms of this Agreement and all necessary governmental licenses, permits and approvals required to construct and operate a wireless communications facility on the Premises.

8. **Licensee's Work, Maintenance and Repairs.** All of Licensee's construction and installation work at the Premises shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. Licensee shall maintain Licensee's Facilities and the Premises in neat and safe condition and in compliance with all applicable codes and governmental regulations and conditions of approval. Licensee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Licensee, its employees, agents, contractors or subcontractors. Upon the expiration, cancellation or termination of this License Agreement, Licensee shall surrender the Premises in good condition, less ordinary wear and tear; however, Licensee shall not be required to remove, unless specifically requested to by the Licensor, any foundation supports for Licensee's Facilities or conduits, which have been installed by Licensee. If removal is required, Licensee shall restore the Premises and Licensor's Real Property to its original condition. Licensee's equipment shall be installed within the northwest quadrant designated for such use in the footprint of the PG&E tower. Utility trenching, site access disturbance or any other damage to Licensor's Real Property shall be restored to the satisfaction of the Parks and Recreation Director. Backfilling, compaction and reseeded (hydroseed) of the disturbed areas shall be required. Damage to existing decomposed granite or concrete pathways and walks caused by this project shall be repaired to the satisfaction of the Parks and Recreation Director. Licensee shall not suffer or permit any mechanic's, vendor's, laborer's or materialman's statutory or similar liens (collectively, "Mechanics Liens") to be filed against the Premises or Licensee's Facilities, nor against Licensee's interest in the Premises pursuant to this Agreement, by reason of work, labor, services or materials supplied or claimed to have been supplied to Licensee or anyone holding any interest in the Premises and/or Licensee's Facilities or any part thereof through or under Licensee. If any such mechanic's lien shall be filed, Licensee shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise; provided, however, that Licensee shall have the right to contest, with due diligence, the validity or amount of any such lien or claimed lien, if Licensee shall give to Licensor security in an amount equal to one and one-half (1-1/2) times the amount of such lien or claimed lien. Subject to the foregoing provisions, if Licensee shall fail to cause such lien to be discharged within such thirty (30) day period, then, in addition to any other right or remedy of Licensor, Licensor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Nothing contained

in this Agreement shall be deemed or construed in any way as constituting the consent or request of Licensor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishings or any materials for any part of Licensee's Facilities, alterations to or repair of the Premises or Licensee's Facilities or any part thereof, nor as giving Licensee a right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against the Premises or Licensee's Facilities.

9. Title to Licensee's Facilities. Licensee shall hold title to Licensee's Facilities and any equipment placed on the Premises by Licensee. All of Licensee's Facilities shall remain the property of Licensee and are not fixtures. Licensee has the right to remove all of Licensee's Facilities at its sole expense on or before the expiration or termination of this License Agreement. Any damage or disturbance to the park premises caused by removal of Licensee's Facilities whether by Licensee or a third party shall be restored and repaired at Licensee's sole cost and expense and to the satisfaction of the Parks and Recreation Director. Licensor acknowledges that Licensee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Licensee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Licensor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Licensee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. Utilities. Licensee shall have the right to install utilities, at Licensee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of temporary emergency back-up power). Subject to Licensor's approval of the location, which approval shall not be unreasonably withheld, Licensee shall have the right to place utilities on (or to bring utilities across) Licensor's Real Property in order to service the Premises and Licensee's Facilities. Upon Licensee's request, Licensor shall execute recordable easement(s) evidencing this right. Licensee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Licensee's Facilities.

11. Interference with Communications. Licensee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment, which exist on Licensor's Real Property on the effective date of this License Agreement ("Pre-existing Communications"), and Licensee's Facilities and operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Upon written notice from Licensor of apparent interference by Licensee with Pre-existing Communications, Licensee shall have the responsibility to promptly terminate such interference or demonstrate to Licensor with competent information that the apparent interference in fact is not caused by Licensee's Facilities or operations. Licensor shall not, nor shall Licensor permit any other tenant or occupant of any portion of Licensor's Real Property to, engage in any activities or operations which interfere with the communications operations of Licensee described in Section 2, above. Licensor will provide Licensee with technical information from the party proposing such installation for review and sign-off by Licensee. Licensor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into any subsequent leases, licenses or rental agreements with other persons or entities for any portion of Licensor's Real Property.

12. **Taxes.** Licensee shall pay personal property taxes assessed against Licensee's Facilities, and Licensor shall pay when due all real property taxes and all other taxes, fees and assessments attributable to the Premises and this License Agreement.

13. **Termination.** This License Agreement may be terminated without further liability except as set forth herein, on thirty (30) days prior written notice as follows: (i) by either party upon default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Licensee if it does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operation of Licensee's Facilities; (iii) by Licensee if Licensee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or changes in frequencies; or (iv) by Licensee for any reason. Except as set forth herein, upon termination, Licensor shall return to Licensee any prepaid rent. In the event this License Agreement is terminated due to a default by Licensee or Licensee terminates this Agreement pursuant to (ii) or (iv) above, Licensee shall pay Licensor a termination penalty as follows: (a) If such termination occurs during the first five (5) years of the term (years 1-5), there will be a penalty equal to two (2) years of the rent then in effect; (b) If such termination occurs during the second 5-year term (years 6-10), the penalty shall be equal to one (1) year of the rent then in effect; and (c) If such termination occurs during the third or fourth 5-year terms (years 11-20), then no penalty will be imposed.

14. **Destruction of Premises.** If the Premises or Licensor's Real Property is destroyed or damaged so as to prevent Licensee's effective use of the Premises and Licensor's Real Property for the ongoing operation of a wireless communications site, Licensee may elect to terminate this License Agreement as of the date of the damage or destruction by so notifying Licensor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties, which do not survive the termination of this License Agreement, shall cease as of the date of the damage or destruction.

15. **Condemnation.** If a condemning authority takes all of Licensor's Real Property, or a portion, which is sufficient to render the Premises unsuitable for Licensee's ongoing operation of a wireless communications site, then this License Agreement shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation preceding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

16. **Insurance.**

(a.) Licensee shall maintain the following insurance: (1) Commercial General Liability with limits of Five Million Dollars (\$5,000,000.00) per occurrence, (2) Automobile Liability with a combined single limit of One Million Dollars (\$1,000,000.00) per accident, (3) Workers Compensation as required by law, and (4) Employer's Liability with limits of One Million Dollars (\$1,000,000.00) per occurrence.

(b.) The City and its officers, agents, employees and volunteers shall be named as additional insured with respect to General Liability and Automobile Liability insurance. Licensee shall furnish to Licensor a certificate, or certificates of insurance with original endorsement, with an insurance carrier consistent with the

provisions hereof and on forms acceptable to the Licensor. Licensee shall furnish prior to or contemporaneously with the execution of this Agreement certificates of Insurance and endorsements. The certificates and endorsements for each insurance policy are to be signed by person authorized by the insurer to bind coverage on its behalf.

- (c.) Each certificate shall bear the endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after Licensor shall have received notification of such cancellation or reduction by registered mail.
- (d.) The minimum insurance coverage shall be as follows:
 - (i.) Public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse and underground hazards shall be in the amount of not less than a combined single limit of one million dollars for one or more persons injured and property damage in each occurrence. The public liability and property damage insurance shall also name as additional insured solely as respects this project on a primary basis, Licensor, as well as its officers, employees, agents and volunteers. To the extent insurance applies, the insurer shall assume the defense of Licensor, its officers, employees, agents and volunteers from all suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of Licensee's Facilities, except as respects suits, actions, damages or claims arising out of intentional or negligent acts of Licensor, its officers, employees, agents or volunteers.
- (e.) Each policy of insurance shall be with insurers with a Best' rating of no less than A:VII, and specify that:
 - (i.) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as if those separate policies had been insured to each insured, and
 - (ii.) It acts as primary insurance and that no insurance held by Licensor shall be called upon to cover either in full or in part, any loss covered under the policy.

17. Assignments or Transfers. Prior to the lien-free completion of construction of Licensee's Facilities, this Agreement and the interest of Licensee under this Agreement may not be assigned (except to Licensee's affiliates) without the prior written consent of Licensor in each instance. Subsequent to completion of such construction, and with the prior consent of Licensor, this Agreement and the interest of Licensee under this Agreement may be assigned to any person, firm or corporation, provided that (with the exception of any permitted assignment as described below) to which the following requirements shall not apply): (a) no such assignment shall be effective for any purpose unless and until (i) the assignor's interest in Licensee's facilities shall be transferred to the assignee of this

Agreement and (ii) there shall be delivered to Licensor (A) a duplicate original of the instrument or instruments of transfer of this Agreement and of the assignor's interest in the Licensee's Facilities in recordable form, containing the name and address of the transferee and (B) an instrument of assumption by the transferee of all of Licensee's obligations under this Agreement; and (b) no such assignment and assumption shall operate or be deemed to operate as a release of the within-named Licensee and/or the duties, obligations and liabilities of Licensee (and/or any guarantor or guarantors of the duties, obligations and liabilities of the within-named Licensee) under this Agreement.

Notwithstanding anything set forth above to the contrary, Licensee shall have the right, without Licensor's consent, to sublicense or assign its rights under this Agreement to any of its subsidiaries, affiliates or successor legal entities or to any entity acquiring substantially all of the assets of Licensee.

18. Co-location. Licensee shall have the right to permit other communications providers (Additional Providers) to occupy space in any equipment enclosure installed by Licensee on the Premises with Licensor's prior written consent, which consent shall not be unreasonably withheld, provided that any such Additional Provider shall be bound by all the duties and obligations of this License Agreement and that Licensee shall be primarily liable to Licensor for such sSublicensee's performance under this License Agreement (Sublicense). In any such Sublicense, Licensee shall be entitled to charge the Sublicensee rent or fees in order to recover a prorata portion of the expenses which Licensee advanced to develop Licensee's Facilities at the Premises and to provide utilities to the Premises. As a condition precedent to the effectiveness of any Sublicense agreement with any Additional Provider, Licensee agrees that such Additional Provider shall be obligated, prior to installation of their facilities, to enter into a separate license agreement with Licensor.

19. Nondisturbance and Quiet Enjoyment;

(a) So long as Licensee is not in default under this License Agreement, Licensee shall be entitled to quiet enjoyment of the Premises during the term of this License Agreement or any Renewal Term, and Licensee shall not be disturbed in its occupancy and use of the Premises.

20. Indemnification.

(a) **Licensee's Indemnity.** Licensee hereby agrees to indemnify and hold Licensor and Licensor's officers, directors, partners, shareholders, employees, agents, volunteers, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Licensee's use, operation, maintenance or repair of Licensee's Facilities at the Premises or access over Licensor's Real Property or Licensee's shared use of Licensor's easements for access to the Premises.

(b) **Survival of Indemnity Provisions.** The indemnity provisions of this section shall survive the cancellation or expiration of this License Agreement.

21. Environmental Issues; Historic Preservation; Hazardous Materials. Licensee shall not bring any hazardous materials onto the Premises except for those contained in its back-up power batteries (lead acid batteries) and common materials used in telecommunications operations, such as cleaning solvents. Licensee shall handle any hazardous materials it brings onto the Premises in accordance with all applicable federal, state and local laws and regulations.

22. **Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Licensor: City of Folsom
Parks and Recreation Department
50 Natoma Street
Folsom, CA 95630-2692
Attn: Director
Telephone: (916) 355-7304
Facsimile: (916) 351-5931

Licensee: MetroPCS California/Florida, Inc.
8144 Walnut Hill Lane, Suite 800
Dallas, Texas 75231
Attn: Property Manager
Telephone: 214-265-2550
Facsimile: 214-265-2570

With a copy to: MetroPCS, Inc.
4235 Forcum Ave., Bldg 618
McClellan, CA 95652
Attn: Corey Linnquist
Telephone: (916) 640-0200
Facsimile: (916) 640-0213

Licensor or Licensee may from time to time designate any other address for notices or deliveries by written notice to the other party.

23. **Miscellaneous.**

(a) **Severability.** If any provision of the License Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this License Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this License Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this License Agreement have full power and authority, to execute and deliver this License Agreement, and that this License Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This License Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) **Waivers.** No provision of this License Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the

implementation or administration of the terms of this License Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this License Agreement.

(d) **Governing Law.** This License shall be governed by and construed in accordance with the laws of the State of California.

(e) **Attorneys' Fees and Costs.** The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and court costs.

(f) **Survival.** Terms and conditions of this License Agreement, which by their sense and context survive the termination, cancellation, or expiration of this License Agreement will so survive.

(g) **Memorandum of License.** Licensor acknowledges that a Memorandum of Agreement substantially in the form annexed hereto as Exhibit C will be recorded by Licensee in the Official Records of the County where the Property is located.

(h) **Entire Agreement; Amendments.** This License Agreement constitutes the entire agreement and understanding between the parties regarding Licensee's license of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this License Agreement must be in writing and executed by authorized representatives of both parties.

(i) **No Presumptions Regarding Preparation of License Agreement.** The parties acknowledge and agree that each of the parties have been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this License Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this License Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this License Agreement.

(j) **Remedies.** The specified remedies to which each party may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which each party may be lawfully entitled in case of any breach or threatened breach by Licensee of any provision of this Agreement. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option in this Agreement shall not be construed as a waiver or a relinquishment for the future of such covenant or option. A receipt by Licensor of Rent with knowledge of the breach of any covenant of this Agreement shall not be deemed a waiver of such breach, and no waiver either party of any provision of this Agreement shall be deemed to have been made unless expressly in writing and signed by each party.


(k) This Agreement cannot be changed orally, but only by an agreement in writing signed and acknowledged by Licensee and Licensor.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this License Agreement on the dates set forth below and acknowledge that this License Agreement is effective as of the date first above written.

LICENSEE: MetroPCS CALIFORNIA/FLORIDA, INC., a Delaware corporation, d/b/a MetroPCS Inc.

(Must be signed by two officers of the Corporation, one of which is the Financial Officer; designate such on "Title" line.)

5 October 2001
Date

Signature
COREY A LENQUIST
Print Name
VP & GM, Sacramento
Title

75-2695067
Tax I.D. Number

Signature
James Markovsky
Print Name
Director of Finance
Title

Each of the above signatures must be notarized either on the form below or attach a separate Certificate of Acknowledgment, pursuant to Civil Code, Section 1189.

CITY OF FOLSOM, A Municipal Corporation:

11-30-01
Date


Martha Clark Lofgren, City Manager

ATTEST:

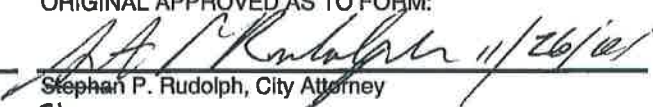
Christa Schmidt 12/3/01
Deputy City Clerk

ATTEST:

David Sanders, Finance Director

ORIGINAL APPROVED AS TO CONTENT:

Tarry Smith, Parks & Recreation Director

ORIGINAL APPROVED AS TO FORM:

Stephen P. Rudolph, City Attorney
Steven

STATE OF California

COUNTY OF Sacramento

On Oct. 5, 2001, before me, Dharma Baker, Notary Public, personally appeared Corly Linquist, personally known to me (or 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.

WITNESS my hand and official seal.

Dharma Baker
Notary Public

(SEAL)



STATE OF California

COUNTY OF Sacramento

On Oct. 5, 2001, before me, Dharma Baker, Notary Public, personally appeared James Markovsky, personally known to me (or 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.

WITNESS my hand and official seal.

Dharma Baker
Notary Public

(SEAL)



**EXHIBIT A
TO THE LICENSE AGREEMENT**

DESCRIPTION OF LICENSOR'S REAL PROPERTY

Licensor's Property of which Premises are a part is described as follows:

Parcel 1, as shown on that certain Parcel Map entitled "A Portion of 1266.758 Acre Tract, 33 R. S. 3", filed for record October 29, 1984 in Book 83 of Parcel Maps at Page 21, Sacramento County Records.

EXCEPTING THEREFROM all minerals, oil, gas and other hydrocarbon substances lying below a depth of 500 feet from the surface of said land and real property, whether now known to exist or hereafter discovered, without, however, any right to use the surface of such land and real property or any portion thereof above a depth of 500 feet from the surface of such land and real property for any purpose whatsoever, as reserved in that certain deed recorded May 31, 1984 in Book 84-05-31, at Page 2626, by and between Angelo K. Tsakopoulos, et al, and M.J. Brock and Sons, Inc., a Delaware Corporation.

Assessors Parcel Number: 071-0040-136, 137

MetroPCS
Site No.: SAC-C18-026A
Site Address: BT Collins Park, Folsom, CA 95630

Page 12 of 16
10/5/2001

EXHIBIT B
TO THE LICENSE AGREEMENT
DESCRIPTION OF PREMISES

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

(A final drawing or copy of a property survey or site plan depicting the above shall replace this Exhibit B when initialed by Licensor or Licensor's designated agent and may be modified from time to time when initialed by both Licensor and Licensee.)

EXHIBIT C

MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: MetroPCS California/Florida, Inc.
8144 Walnut Creek Hill Lane, Suite 800
Dallas, Texas 75231
Attn.: Property Manager

This Memorandum of Agreement is entered into on this ____ day of _____, _____, by and between the CITY OF FOLSOM, a municipal corporation of the State of California with an office at 50 Natoma Street, Folsom, California 95630 (hereinafter referred to as "Licensor"), and MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS, Inc., with an office at 8144 Walnut Creek Hill Lane, Suite 800, Dallas, Texas 75231 (hereinafter referred to as "Licensee").

1. Licensor and Licensee entered into a Communications Site License Agreement ["Agreement"] on the ____ day of _____, _____, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on _____, or _____, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date, with three (3) successive five (5) year options to renew.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto.

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

LICENSOR:

LICENSEE:

MetroPCS, California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS Inc.

INITIAL ONLY

CA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Not for Signature

STATE OF _____

COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or 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 capacit(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.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF _____

COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or 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 capacit(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.

WITNESS my hand and official seal.

Notary Public

(SEAL)

EXHIBIT D

<u>YEAR</u>	<u>FEE</u>	<u>PAYMENT</u>	<u>RUNNING TOTAL</u>
1	\$12,000.00	\$24,360.00	\$24,360.00
2	\$12,360.00		
3	\$12,730.80	\$25,843.52	\$50,203.52
4	\$13,112.72		
5	\$13,506.11	\$27,417.39	\$77,620.92
6	\$13,911.29		
7	\$14,328.63	\$29,087.11	\$106,708.03
8	\$14,758.49		
9	\$15,201.24	\$30,858.52	\$137,566.55
10	\$15,657.28		
11	\$16,127.00	\$32,737.80	\$170,304.35
12	\$16,610.81		
13	\$17,109.13	\$34,731.54	\$205,035.89
14	\$17,622.40		
15	\$18,151.08	\$36,846.69	\$241,882.58
16	\$18,695.61		
17	\$19,256.48	\$39,090.65	\$280,973.22
18	\$19,834.17		
19	\$20,429.20	\$41,471.27	\$322,444.49
20	\$21,042.07		
			\$322,444.49