

RESOLUTION 2013 - 34



**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON,  
APPROVING AGREEMENT OF SETTLEMENT AND RELEASE  
AND AUTHORIZING THE INTERIM CITY MANAGER  
TO EXECUTE SUCH AGREEMENT AND  
ADMINISTER PERFORMANCE OF THE SAME**

**WHEREAS**, the City of Sunnyside and New Cingular Wireless PCS LLC have agreed upon terms set forth in the Agreement of Settlement and Release, attached hereto as Exhibit "A"; and

**WHEREAS**, the City Council finds and determines that authorizing the Interim City Manager to execute said Agreement of Settlement and Release is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety and welfare;

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**Section 1.** That the Sunnyside City Council hereby approves the Agreement of Settlement and Release attached hereto as Exhibit "A" and the Interim City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer performance of such agreement.

**Section 2.** That this Resolution shall be effective upon passage, approval and signatures hereon as required by law.

**PASSED** this 8<sup>th</sup> day of April, 2013.

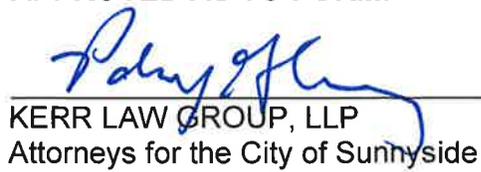
  
JAMES A. RESTUCCI, MAYOR

**ATTEST:**



DELILAH SAENZ, CMC, CITY CLERK

**APPROVED AS TO FORM:**



KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

EXHIBIT "A"

**AGREEMENT OF SETTLEMENT & RELEASE BETWEEN  
NEW CINGULAR WIRELESS PCS LLC  
AND THE CITY OF SUNNYSIDE, WASHINGTON**

New Cingular Wireless PCS LLC ("Claimant"), the Settlement Class as described below, and the City of Sunnyside ("City"), enter into the following Agreement of Settlement and Release ("Agreement") with regard to the Claim described and defined below.

WHEREAS, the Claimant and Settlement Class submitted to City a claim dated November 1, 2010, subsequently modified by letter dated June 15, 2012, seeking the refund of \$24,654.58 in Local Utility Tax ("Tax"), which Tax had previously been collected by the Claimant from its customers on charges for data services providing Internet access between November 1, 2005 and September 30, 2010, and which Tax previously was remitted by the Claimant to City (the "Claim"); and

WHEREAS, City has asserted various defenses to the Claim, including but not limited to an assertion that certain portions of the Claim are outside the three year limitations period for which a refund of Taxes is available under the City's municipal code; and

WHEREAS, the Claimant is a party-defendant to the Global Class Action Settlement Agreement approved by the United States District Court for the Northern District of Illinois in Case No. 10-CV-02278, pursuant to which the rights of the customers included in the Settlement Class (the "Settlement Class") have been established; and

WHEREAS, the Settlement Class includes but is not limited to customers from whom the Tax was collected, which Tax is sought in the Claim; and

WHEREAS, the Claimant has filed suit in King County Superior Court against City and others under Cause No. 12-2-15031-1 SEA (the "Lawsuit"); and

EXHIBIT "A"

WHEREAS, the Claimant and City desire to promptly settle the Claim and dismiss allegations against the City in the Lawsuit, and as a result resolve this matter fully and finally as between the Claimant and City.

NOW, THEREFORE, the parties hereto mutually agree:

FIRST, the Claimant Settlement Class and City agree that this Agreement shall be final with regard to any liability for Tax sought in the Claim.

SECOND, City agrees to pay, and the Claimant and Settlement Class agree to accept payment of \$17,622.09 in full satisfaction of any and all obligations with respect to the Claim. In exchange for this payment, the Claimant and Settlement Class agree to release City from any further liability with regard to the Claim.

THIRD, City shall issue a check in the amount of \$17,622.09 in the name of AT&T Mobility Settlement Fund (escrow account) and shall within thirty (30) days after the final execution of this Agreement, send such check via certified mail to John Brophy, ARPC, 1220 19<sup>th</sup> Street, NW, Suite 700, Washington, DC 20036, for deposit in an escrow account for the benefit of the Settlement Class as prescribed by the Global Class Action Settlement Agreement referenced above. A copy of that check shall simultaneously be mailed to Thomas Giltner, Esq., AT&T, 208 S. Akard St. Suite 3015, Dallas, Texas 75202. A copy of that check shall simultaneously be mailed to James P. Frickleton, Bartimus, Frickleton, Robertson & Gorny, P.C., 11150 Overbrook Road, Suite 200, Leawood, KS 66211; Margaret C. Wilson, Reeder Wilson LLP, 231 Altamont Place, Somerville, NJ 08876; and Michael R. Scott, Hillis Clark Martin & Peterson P.S., 1221 Second Avenue, Suite 500, Seattle, WA 98101.



EXHIBIT "A"

ACKNOWLEDGMENT OF CONSENT TO AGREEMENT:

THE SETTLEMENT CLASS, BY AND  
THROUGH SETTLEMENT CLASS COUNSEL

\_\_\_\_\_  
*Date*

By \_\_\_\_\_  
*Name* \_\_\_\_\_  
*Title* \_\_\_\_\_