

RESOLUTION NO. 2015-0267

Adopted by the Sacramento City Council

August 18, 2015

AUTHORIZING A SIXTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT FOR A TELECOMMUNICATIONS TOWER AT OKI PARK

BACKGROUND

- A. City Agreement No. 96-115 (Agreement) was executed on September 24, 1996 by the City and Sacramento Cellular Telephone Company for the operation of a telecommunications tower at Oki Park. Through a series of mergers and acquisitions, Sacramento Cellular Telephone Company became New Cingular Wireless PCS, LLC (Permittee). The Permittee, having assumed all of the rights and obligations under the Agreement, is interested in continuing the Agreement with the City. The recommended amendment to the Agreement (Exhibit A) will extend the term for five years with three five-year renewal options.
- B. The recommendation in this report is in accordance with City Code Chapter 3.76 regarding revocable permits, as well as the 2035 General Plan regarding telecommunication infrastructure.
- C. Revenue from the recommended amendment will be recorded in the General Fund (Fund 1001) in the Citywide and Community Support budget in accordance with Resolution No. 2012-020 adopted by City Council on January 31, 2012. The recommended amendment includes an initial term of five years with three five-year renewal options, and annual rent increases of three percent. Annual revenue will begin at \$22,489 in the first year and increase to \$25,311 by the fifth year, for a total of \$119,395 at the end of the fifth year. If all renewal options are exercised the agreement will expire September 30, 2036.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or the City Manager's designee is authorized to execute the Sixth Amendment to Revocable Permit Agreement for Oki Park (City Agreement No. 96-115), and any other documents necessary to implement the amendment, with New Cingular Wireless PCS, LLC for five years with three five-year renewal options for the operation of a telecommunications tower and associated equipment.

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Exhibit A – Sixth Amendment to Revocable Permit Agreement

Adopted by the City of Sacramento City Council on August 18, 2015, by the following vote:

Ayes: Members Ashby, Carr, Guerra, Hansen, Harris, Jennings, Schenirer, Warren and Mayor Johnson

Noes: None

Abstain: None

Absent: None

Attest:

Shirley Concolino

Digitally signed by Shirley Concolino
DN: cn=Shirley Concolino, o=City of Sacramento, ou=City
Clerk, email=sconcolino@cityofsacramento.org, c=US
Date: 2015.08.25 10:14:46 -07'00'

Shirley Concolino, City Clerk

SIXTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT FOR OKI PARK

WHEREAS, **Sacramento Cellular Telephone Company, doing business as AT&T Wireless Services of California**, and the City of Sacramento, a municipal corporation ("City"), previously entered into a Revocable Permit for use of a certain portion of **OKI PARK** – 2701 Wissemann Drive, Sacramento, CA 95826, dated September 24, 1996, and identified as City Agreement No. **96-115** (the "Revocable Permit"); and

WHEREAS, AT&T Wireless Services of California subsequently converted to AT&T Wireless Services of California, LLC, which through a series of mergers and acquisitions, became New Cingular Wireless PCS, LLC, a Delaware limited liability company ("New Cingular Wireless"); and

WHEREAS, New Cingular Wireless has granted CCATT LLC, a Delaware limited liability company, a Limited Power of Attorney to review, negotiate and execute this Sixth Amendment; and

WHEREAS, Sacramento Cellular Telephone Company, AT&T Wireless Services of California, LLC, New Cingular Wireless and CCATT LLC shall hereafter be referred to collectively and singularly as the Permittee; and

WHEREAS, Permittee entered into the First Amendment to Revocable Permit Agreement, dated July 5, 2002, further identified as City Manager Agreement No. 96-115-1, and Second Amendment to Revocable Permit Agreement, dated December 4, 2002, further identified as City Manager Agreement No. 96-115-2, and Third Amendment to Revocable Permit Agreement, dated April 28, 2004, further identified as City Manager Agreement No. 96-115-3, and Fourth Amendment to Revocable Permit Agreement, dated December 5, 2008, further identified as City Manager Agreement No. 96-115-4, and Fifth Amendment to Revocable Permit Agreement, dated September 14, 2011, further identified as City Manager Agreement No. 96-115-5 (collectively the "Revocable Permit"); and

WHEREAS, the Revocable Permit had an initial term that commenced on October 1, 1996 and expired on September 30, 2006. The Revocable Permit provides for one (1) extension of ten (10) years. According to the Revocable Permit, the extension expires September 30, 2016; and

WHEREAS, Permittee and the City of Sacramento desire to further amend the Revocable Permit as provided herein.

NOW THEREFORE,

- 1) Except as specifically provided herein, all terms and conditions of the Revocable Permit identified as City Agreement No. 96-115, 96-115-1, 96-115-2, 96-115-3,

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96-115-4, and 96-115-5, including the total annual rent, shall remain in full force and effect.

- 2) Pursuant to Paragraph 5(c) of the Revocable Permit, Permittee shall continue to maintain and operate its facilities in a manner that does not interfere with City's communications systems.
- 3) Paragraph 3.b. of the Revocable Permit is hereby deleted and the following is inserted in its place:

Permittee shall have the right to renew the Revocable Permit for an additional ten (10) year term (the "Ten-Year Renewal Term"), followed by four (4) additional terms of five (5) years each (each a "Five-Year Renewal Term"). The Revocable Permit shall automatically be extended for each successive Five-Year Renewal Term unless Permittee notifies the City of its intention not to renew at least ninety (90) days prior to the expiration of the then-current five year term.

The City and Permittee hereby acknowledge that Permittee has exercised the Ten-Year Renewal Term, leaving a balance of four (4) Five-Year Renewal Terms, with the final extension expiring on September 30, 2036.

- 4) Paragraph 4 of the Revocable Permit is hereby deleted and the following is inserted in its place:

4. RENT

- a. Throughout the Ten-Year Renewal Term, and for each and every Five-Year Renewal Term exercised by Permittee, the rent shall increase, commencing on October 1, 2016, and every year thereafter on the anniversary date of the Revocable Permit, by three percentage points (3.0%).
 - b. The rent paid by Permittee is currently paid on a monthly basis. During the Ten-Year Renewal Term and for each successive Five-Year Renewal Term, rent shall continue to be paid on a monthly basis unless Permittee requests in writing that payments be made in one lump sum on each anniversary date, approval of which shall not be unreasonably withheld.
- 5) If requested by Permittee, the City will reasonably cooperate in executing, at Permittee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Permittee in Permittee's absolute discretion to utilize the premises for the

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purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. The City agrees to be named applicant if requested by Permittee. Execution of any documents on behalf of Permittee will not unduly obligate the City. The City shall take no action that would adversely affect the status of the premises with respect to the proposed use by Permittee. The City shall be entitled to no further consideration with respect to any of the foregoing matters.

- 6) a) The City and Permittee agree that Permittee is the current permittee under the Revocable Permit, the Revocable Permit is in full force and effect, as amended herein, and the Revocable Permit contains the entire agreement between the City and Permittee with respect to the premises.
- b) The City agrees that any and all actions or inactions that have occurred or should have occurred prior to the date of this Sixth Amendment are approved and ratified and that no breaches or defaults exist as of the date of this Sixth Amendment.
- c) The City represents and warrants that the City is duly authorized and has the full power, right and authority to enter into this Sixth Amendment and to perform all of its obligations under the Revocable Permit as amended.
- 7) The following addresses are to replace those listed in Section 13 of the Revocable Permit:

City:

City of Sacramento
Facilities and Real Property Management
Attn: Telecom Program Manager
915 "I" Street, 2nd Floor
Sacramento, CA 95814

Permittee:

New Cingular Wireless PCS, LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Legal Department
2000 Corporate Drive
Canonsburg, PA 15317

- 8) The City agrees to provide Permittee with a completed IRS Form W-9, or its equivalent, upon execution of this Sixth Amendment and at such other times as may be reasonably requested by Permittee. In the event the City's property is

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transferred, the succeeding owner shall have a duty at the time of such transfer to provide Permittee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in the rent to the new owner. The City's failure to provide the IRS Form W-9 within thirty (30) days after Permittee's request shall be considered a default and Permittee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

- 9) The parties hereto acknowledge that except as expressly modified hereby, the Revocable Permit remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Sixth Amendment and the Revocable Permit, the terms of this Sixth Amendment shall control. This Sixth Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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SIXTH AMENDMENT TO REVOCABLE PERMIT
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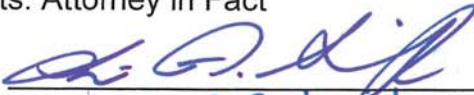
IN WITNESS WHEREOF, Permittee and the City of Sacramento have executed this
Sixth Amendment as of _____, 20_____.

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

City of Sacramento,
a municipal corporation

By: CCATT LLC,
a Delaware limited liability company,
Its: Attorney in Fact

By: _____
Print Name: John Dangberg
Title: Assistant City Manager
For: John F. Shirey, City Manager

By: 
Print Name: Lisa A. Sedgwick
Title: RFT Manager
Dated: 5/21/2015

Dated: _____

APPROVED AS TO FORM:

By: 
Senior Deputy City Attorney

ATTEST:

By: _____
City Clerk