

Meeting Date: 3/15/2016

Report Type: Consent

Report ID: 2016-00192

Title: Eighth Amendment to Revocable Permit Agreement for Telecommunications Equipment at the Riverside Water Treatment Plant

Location: 3530 Riverside Boulevard, District 4

Recommendation: Pass a Resolution authorizing the City Manager or the City Manager's designee to execute the Eighth Amendment to Revocable Permit Agreement for the Riverside Water Treatment Plant (City Agreement No. 94-127), and any other documents necessary to implement the amendment, with New Cingular Wireless PCS, LLC for five years with four five-year renewal options for the operation and maintenance of telecommunications equipment.

Contact: Ken Hancock, Real Property Agent III, (916) 808-5752, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Real Estate/Asset Management

Dept ID: 15004551

Attachments:

1-Description/Analysis

2-Resolution

3-Agreement

City Attorney Review

Approved as to Form

Maila Hansen

3/8/2016 10:18:34 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 2/25/2016 3:10:29 PM

Description/Analysis

Issue Detail: City Agreement No. 94-127 (Agreement) was executed on September 26, 1994 by the City and Sacramento Cellular Telephone Company, dba Cellular One, for the operation and maintenance of telecommunications equipment at the Riverside Water Treatment Plant. Sacramento Cellular Telephone Company became New Cingular Wireless PCS, LLC (Permittee) through a series of mergers and acquisitions. The recommended amendment to the Agreement will extend the term for five years with four five-year renewal options.

Policy Considerations: The recommendation in this report is in accordance with City Code Chapter 3.76 and the Sacramento General Plan regarding telecommunication infrastructure.

Economic Impacts: None

Environmental Considerations:

California Environmental Quality Act (CEQA): No environmental review is necessary because the recommendation in this report involves a continuing administrative activity and is not considered to be a project in accordance with Section 15378(b)(2) of the CEQA Guidelines.

Sustainability: Not applicable

Commission/Committee Action: None

Rationale for Recommendation: Executing the recommended amendment to the Agreement will allow the Permittee to continue providing telecommunications coverage at the Riverside Water Treatment Plant.

The following table provides information about the prior amendments:

Amendment No.	Date	Purpose
First	4/1/1998	Relocate existing equipment
Second	4/5/2002	Equipment upgrade to 3G
Third	4/28/2004	Install additional equipment & antenna
Fourth	12/1/2008	Install two additional antennas
Fifth	7/27/2010	Minor equipment modification
Sixth	9/14/2011	Minor equipment modification
Seventh	8/5/2014	Minor equipment modification

Financial Considerations: In accordance with Resolution No. 2012-020 adopted by City Council on January 31, 2012, revenue from the recommended amendment will be recorded as follows: 25 percent in the Water Fund (Fund 6005); and 75 percent in the General Fund (Fund 1001). The recommended amendment includes an initial term of five years with four five-year renewal options, and annual rental/permit fee increases of three percent. Annual revenue will begin at \$18,000 in the first year and increase to \$20,259 by the fifth year, for a total of \$95,594 at the end of the fifth year.

Local Business Enterprise (LBE): Not applicable

RESOLUTION NO. 2016-

Adopted by the Sacramento City Council

March 15, 2016

AUTHORIZING AN EIGHTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT FOR TELECOMMUNICATIONS EQUIPMENT AT THE RIVERSIDE WATER TREATMENT PLANT

BACKGROUND

- A. City Agreement No. 94-127 (Agreement) was executed on September 26, 1994 by the City and Sacramento Cellular Telephone Company, dba Cellular One, for the operation and maintenance of telecommunications equipment at the Riverside Water Treatment Plant. Sacramento Cellular Telephone Company became New Cingular Wireless PCS, LLC through a series of mergers and acquisitions.
- B. The recommendation in this report is in accordance with City Code Chapter 3.76 regarding revocable permits, and the Sacramento General Plan regarding telecommunication infrastructure.
- C. In accordance with Resolution No. 2012-020 adopted by City Council on January 31, 2012, revenue from the recommended amendment will be recorded as follows: 25 percent in the Water Fund (Fund 6005); and 75 percent in the General Fund (Fund 1001). The recommended amendment includes an initial term of five years with four five-year renewal options, and annual rental/permit fee increases of three percent. Annual revenue will begin at \$18,000 in the first year and increase to \$20,259 by the fifth year, for a total of \$95,594 at the end of the fifth year.

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

Section 1. The City Manager or City Manager's designee is authorized to execute the Eighth Amendment to Revocable Permit Agreement for the Riverside Water Treatment Plant (City Agreement No. 94-127), and any other documents necessary to implement the amendment, with New Cingular Wireless PCS, LLC for five years with four five-year renewal options for the operation and maintenance of telecommunications equipment.

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Exhibit A – Eighth Amendment to Revocable Permit Agreement

**EIGHTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT
FOR RIVERSIDE WATER TREATMENT PLANT**

WHEREAS, **Sacramento Cellular Telephone Company, dba Cellular One**, and the City of Sacramento, a municipal corporation (“City”), previously entered into a Revocable Permit for use of a certain portion of the **RIVERSIDE WATER TREATMENT PLANT** – 3530 Riverside Boulevard, Sacramento, CA 95818, dated September 26, 1994, and identified as City Agreement No. **94-127** (the “Revocable Permit”); and

WHEREAS, New Cingular Wireless PCS, LLC, a Delaware limited liability company (“New Cingular Wireless”) was formerly known as AT&T Wireless Services of California, LLC, and AT&T Wireless Services of California, LLC was the successor in interest to Sacramento Cellular Telephone Company, and New Cingular Wireless has assumed all of the rights and obligations of City Agreement No. 94-127, and the Amendment No. 1 to Revocable Permit Agreement, dated April 1, 1998, further identified as City Agreement No. 94-127-1, and the Second Amendment to Revocable Permit Agreement, dated July 5, 2002, further identified as City Agreement No. 94-127-2; and the Third Amendment to Revocable Permit Agreement, dated April 28, 2004, further identified as City Agreement No. 94-127-3; and the Fourth Amendment to Revocable Permit Agreement, dated December 1, 2008, further identified as City Agreement No. 94-127-4; and the Fifth Amendment to Revocable Permit Agreement, dated July 27, 2010, further identified as City Agreement No. 94-127-5; and the Sixth Amendment to Revocable Permit Agreement, dated September 14, 2011, further identified as City Agreement No. 94-127-6; and the Seventh Amendment to Revocable Permit Agreement, dated August 5, 2014, further identified as City Agreement No. 94-127-7; and

WHEREAS, Sacramento Cellular Telephone Company, Cellular One and New Cingular Wireless shall hereafter be referred to collectively and singularly as the Permittee; and

WHEREAS, the Revocable Permit had an initial term that commenced on September 26, 1994 and expired on September 25, 2004; and

WHEREAS, on April 13, 2004, Permittee exercised its option to extend the Revocable Permit for its one (1) extension of ten (10) years, commencing on September 26, 2004. According to the Revocable Permit, the extension was to expire on September 25, 2014; and

WHEREAS, since September 26, 2014, the Revocable Permit has been in a holdover period, wherein Permittee has continued to make its annual payment and has continued to adhere to the terms of the Revocable Permit with the understanding that Permittee and City would work in good faith to amend the Revocable Permit to extend Permittee’s term.

NOW THEREFORE,

- 1) Except as specifically provided herein, all terms and conditions of the Revocable Permit identified as City Agreement No. 94-127, 94-127-1, 94-127-2, 94-127-3, 94-127-4, 94-127-5, 94-127-6 and 94-127-7, 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 five (5) 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 Renewal Term.

The City and Permittee hereby acknowledge that Permittee has exercised the Ten-Year Renewal Term. City and Permittee also acknowledge that Permittee has exercised its first Five-Year Renewal Term, effective September 26, 2014, leaving a balance of four (4) Five-Year Renewal Terms, with the final extension expiring on September 25, 2039.

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

4. FEE FOR ISSUANCE OF REVOCABLE PERMIT

- a. On September 26, 2014, the annual fee payable under the Revocable Permit will be \$18,000.00. Throughout the Ten-Year Renewal Term, and for each and every Five-Year Renewal Term exercised by Permittee, the fee shall increase, commencing on September 26, 2015, and every year thereafter on the anniversary date of the Revocable Permit, by three percentage points (3.0%).

- i. The following chart depicts the fee schedule for the first Five-Year Renewal Term:

<u>Anniversary Date</u>	<u>Annual Fee</u>
9/26/2014	\$18,000.00
9/26/2015	\$18,540.00

EIGHTH AMENDMENT TO REVOCABLE PERMIT
RIVERSIDE WATER TREATMENT PLANT

9/26/2016	\$19,096.20
9/26/2017	\$19,699.09
9/26/2018	\$20,259.16

- ii. Permittee acknowledges that fee paid for the year commencing on 9/26/2014 was \$17,075.20 and that fee paid for the year commencing on 9/26/2015 will be \$16,740.39, which, when the fee payments for the respective years are combined, amount to a total of \$2,724.41 less than the actual amount due based on the payment schedule. As a result, Permittee agrees to augment the payment for the year commencing on 9/26/2016 by the amount of \$2,724.41 for a total amount to be paid of \$21,820.61 due on or before October 10, 2016. All other payments will adhere to the payment schedule shown above.
 - b. The fee paid by Permittee is currently paid on a monthly basis. During the Ten-Year Renewal Term and for each successive Five-Year Renewal Term, the fee shall continue to be paid on a monthly basis unless Permittee requests in writing that payments be made annually, approval of which shall not be unreasonably withheld.
 - c. The fee shall be payable to City of Sacramento, Department of Public Works, Attn: Business Services, 5730 24th Street, Building 1, Sacramento, CA 95822, and is due on or before the 10th day of the month every month during each Five-Year Renewal Term.
- 5) Paragraph 7 of the Revocable Permit is amended to add subsection (e), which shall read as follows:
- e. If development or construction is requested by Permittee and approved by City, 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 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.
- 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 along with the eight amendments contain the entire agreement between the City and Permittee with respect to the premises.

EIGHTH AMENDMENT TO REVOCABLE PERMIT
RIVERSIDE WATER TREATMENT PLANT

- b) The City agrees that any and all actions or inactions that have occurred or should have occurred prior to the date of this Eighth Amendment are approved and ratified and that no breaches or defaults exist as of the date of this Eighth 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 Eighth 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
Attn: Network Real Estate Administration
Re: Cell Site #: CNU1493
Search Ring Name: SUTTERVILLE MICRO
Cell Site Name: SUTTERVILLE MICRO
Fixed Asset No: 10090705
575 Morosgo Drive
Atlanta, GA 30324

With a copy to AT&T Legal Department:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: CNU1493
Search Ring Name: SUTTERVILLE MICRO
Cell Site Name: SUTTERVILLE MICRO
Fixed Asset No: 10090705
208 S. Akard Street
Dallas, Texas 75202-4206

- 8) The City agrees to provide Permittee with a completed IRS Form W-9, or its equivalent, upon execution of this Eighth Amendment and at such other times as

EIGHTH AMENDMENT TO REVOCABLE PERMIT
RIVERSIDE WATER TREATMENT PLANT

may be reasonably requested by Permittee. In the event the City's property is transferred, City shall provide advance notice to Permittee of the transfer. 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 Eighth Amendment and the Revocable Permit, the terms of this Eighth Amendment shall control. This Eighth 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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EIGHTH AMENDMENT TO REVOCABLE PERMIT
RIVERSIDE WATER TREATMENT PLANT

IN WITNESS WHEREOF, Permittee and the City of Sacramento have executed this Eighth Amendment as of _____, 20_____.

New Cingular Wireless PCS, LLC,
a Delaware limited liability company,
By: AT&T Mobility Corporation
Its: Manager

By: 
Print Name: Michael Guibord
Title: Director
Dated: Construction & Engineering

1/7/2016

City of Sacramento,
a municipal corporation

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

Dated: _____

APPROVED AS TO FORM:

By: Maile Hansen

ATTEST:

By: _____
City Clerk