

**Meeting Date:** 3/15/2016

**Report Type:** Consent

**Report ID:** 2016-00193

**Title:** Fifth Amendment to Revocable Permit Agreement for Telecommunications Equipment at the Freeport Water Tower

**Location:** 7788 Freeport Boulevard, District 7

**Recommendation:** Pass a Resolution authorizing the City Manager or the City Manager's designee to execute the Fifth Amendment to Revocable Permit Agreement for Freeport Water Tower (City Agreement No. 91-041), 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

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### **City Attorney Review**

Approved as to Form

Maila Hansen

3/8/2016 3:31:22 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 2/25/2016 3:09:50 PM

## Description/Analysis

**Issue Detail:** City Agreement No. 91-041 (Agreement) was executed on March 15, 1991, by the City and ACC McCaw Cellular of Sacramento for the operation and maintenance of telecommunications equipment at the Freeport Water Tower. ACC McCaw Cellular of Sacramento 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 Freeport Water Tower.

The following table provides information about the prior amendments:

Amendment No.	Date	Purpose
First	4/5/2002	Equipment upgrade to 3G
Second	11/1/2010	Extend term & modify fee
Third	9/14/2011	Minor equipment modification
Fourth	6/16/2015	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 \$38,452 the first year and increase to \$43,277 by the fifth year, for a total of \$204,146 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 A FIFTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT FOR TELECOMMUNICATIONS EQUIPMENT AT THE FREEPORT WATER TOWER**

#### **BACKGROUND**

- A. City Agreement No. 91-041 (Agreement) was executed on March 15, 1991 by the City and ACC McCaw Cellular of Sacramento for the operation and maintenance of telecommunications equipment at the Freeport Water Tower. ACC McCaw Cellular of Sacramento 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 \$38,452 in the first year and increase to \$43,277 by the fifth year, for a total of \$204,146 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 Fifth Amendment to Revocable Permit Agreement for the Freeport Water Tower (City Agreement No. 91-041), 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 – Fifth Amendment to Revocable Permit Agreement

**FIFTH AMENDMENT TO REVOCABLE PERMIT AGREEMENT  
FOR FREEPORT WATER TOWER**

WHEREAS, **ACC McCaw Cellular of Sacramento, 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 **FREEPORT WATER TOWER** – 7788 Freeport Boulevard, Sacramento, CA 95832, dated March 15, 1991, and identified as City Agreement No. **91-041** (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 ACC McCaw Cellular of Sacramento, and New Cingular Wireless has assumed all of the rights and obligations of City Agreement No. 91-041, and the First Amendment to Revocable Permit Agreement, dated July 5, 2002, further identified as City Agreement No. 91-041-1, and the Second Amendment to Revocable Permit Agreement, dated November 1, 2010, further identified as City Agreement No. 91-041-2; and the Third Amendment to Revocable Permit Agreement, dated September 14, 2011, further identified as City Agreement No. 91-041-3; and the Fourth Amendment to Revocable Permit Agreement, dated June 16, 2015, further identified as City Agreement No. 91-041-4; and

WHEREAS, ACC McCaw Cellular of Sacramento, 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 March 15, 1991 and expired on March 14, 2001; and

WHEREAS, on December 8, 2000, Permittee exercised its option to extend the Revocable Permit for its one (1) extension of ten (10) years, commencing on March 15, 2001. According to the Revocable Permit, the extension was to expire on March 14, 2011; and

WHEREAS, on November 1, 2010, City and Permittee entered into the Second Amendment to Revocable Permit Agreement, which among other things, extended the Term of the Revocable Permit from March 15, 2011 for a period of 24 months, expiring on March 14, 2013; and

WHEREAS, since March 15, 2013, 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; 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. 90-041, 90-041-1, 90-041-2, 90-041-3 and 90-041-4 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 as well as the first of its Five-Year Renewal terms, of which, the first two years were accounted-for in the Second Amendment to Revocable Permit, leaving a balance of four (4) Five-Year Renewal Terms, with the final extension expiring on March 14, 2036.

- 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 March 15, 2016, the annual fee payable under the Revocable Permit will be \$38,451.86. Throughout the Ten-Year Renewal Term, and for each and every Five-Year Renewal Term exercised by Permittee, the fee shall increase, commencing on March 15, 2017, and every year thereafter on the anniversary date of the Revocable Permit, by three percentage points (3.0%).
- b. The fee paid by Permittee is currently paid on an annual basis. During the Ten-Year Renewal Term and for each successive Five-Year Renewal Term, the fee shall continue to be paid on

FIFTH AMENDMENT TO REVOCABLE PERMIT  
FREEPORT WATER TOWER

an annual basis unless Permittee requests in writing that payments be made monthly, 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 24<sup>th</sup> Street, Building 1, Sacramento, CA 95822, and is due on or before the 10th day of January each year.

- 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 four amendments contain 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 Fifth Amendment are approved and ratified and that no breaches or defaults exist as of the date of this Fifth 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 Fifth 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:

FIFTH AMENDMENT TO REVOCABLE PERMIT  
FREEPORT WATER TOWER

City:

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

Permittee:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: CNU1454  
Search Ring Name: FREEPORT WATER  
Cell Site Name: FREEPORT WATER  
Fixed Asset No: 10090747  
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 #: CNU1454  
Search Ring Name: FREEPORT WATER  
Cell Site Name: FREEPORT WATER  
Fixed Asset No: 10090747  
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 Fifth Amendment and at such other times as 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 Fifth Amendment and the Revocable Permit, the terms of this Fifth Amendment shall control. This Fifth 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.

FIFTH AMENDMENT TO REVOCABLE PERMIT  
FREEPORT WATER TOWER

IN WITNESS WHEREOF, Permittee and the City of Sacramento have executed this Fifth 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 Guilbord  
Title: Director  
Construction & Engineering  
Dated: 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: 

ATTEST:

By: \_\_\_\_\_  
City Clerk