

SECOND AMENDMENT TO PERMIT AGREEMENT
No. 5282

This Second Amendment to Permit Agreement No. 5282 ("Second Amendment"), dated for reference purposes only as of October 12, 2016 is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Permitter"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Permittee").

Recitals

A. As authorized by San Mateo County Resolution No. 64098, County and Permittee's predecessor in interest, Bay Area Cellular Telephone Company, a California general partnership, doing business as AT&T Wireless Services, entered into a certain Permit Agreement No. 5282, dated for reference purposes as of November 28, 2000 (collectively with all executed amendments, the "Agreement") for use of a portion of the building located at 2415 University Avenue, East Palo Alto, California, consisting of approximately 240 square feet of roof space, as more particularly described in such Agreement (collectively, the "Premises") for the installation, construction, operation, and maintenance of a communications facility.

B. As authorized by San Mateo County Resolution No. 71545, County and Permittee entered into the First Amendment to Permit Agreement No. 5282 dated for reference purposes only as of July 26, 2011. The amendment authorized Permittee to install additional equipment on the Premises and increase the Base Permit Fee due under the Agreement.

C. Pursuant to Section 5 of the Permit, the Term previously expired on May 31, 2016; however, Permittee has occupied the Premises since that time in holdover on a month-to-month basis with the County's consent pursuant to the provisions of Section 35 (Holding Over) of the Agreement.

D. County and Permittee desire to amend the Agreement to extend the term, provide an option to extend the term, increase the Base Permit Fee, modify the notice section, and modify the termination language set forth in the Agreement.

Agreement

For good and valuable consideration as set forth below, the sufficiency of which is hereby acknowledged, the parties agree to amend and modify the Agreement as follows:

1. Term. Notwithstanding any other references to the term in the Agreement, and subject to the Permittee's Extension Option as set forth below in Section 2, the term ("Term") of the Agreement is hereby extended to May 31, 2021. County and Permittee agree that the extension of the Term until May 31, 2021 is retroactively effective as of June 1, 2016. For purposes of the Termination provision of Section 3 below, the period expiring May 31, 2021 shall be deemed the "Initial Term."

2. Option to Extend Term. Permittee shall have the right to extend the Term for one (1) additional period of five (5) years commencing on June 1, 2021 and expiring on May 31, 2026 ("Extension Term"). If Permittee is not then in monetary default beyond any applicable notice and cure period under the terms of the Agreement, then the Agreement shall automatically renew for the Extension Term, upon the same terms and conditions, unless Permittee, at its sole discretion, delivers written notice to Permitter of Permittee's intention not to renew the Agreement no later than March 1, 2021.
3. Termination. The text of Section 8.(D) of the Agreement, is hereby deleted in its entirety, and replaced with the following text:
 - (i) "after expiration of the Initial Term, by Permittee or Permitter on twenty four (24) months' written notice for any reason other than (a) above, or paragraph 30, below, or for no reason."
4. Base Permit Fee. Commencing on March 1, 2017, the monthly Base Permit Fee shall increase to Six Thousand Eight Hundred Forty-Three Dollars and 63/100 (\$6,843.63), which Base Permit Fee shall be in effect through December 31, 2017. For the period June 1, 2016 through February 28, 2017, the Base Permit Fee shall be calculated in accordance with the Permittee's holdover in fact status prior to the execution of this Second Amendment.
5. Adjustments to Base Permit Fee. Notwithstanding Section 14 (Base Fee Adjustment) of the Agreement, beginning on March 1, 2018, and on the 1st day of March of each successive year of the Term of the Agreement, the monthly Base Permit Fee shall be adjusted to equal one hundred three percent (103%) of the monthly Base Permit Fee for the immediately preceding permit year.
6. Indemnification and Insurance. The text of Sections 22.B., 22.C., and 22.D of the Agreement are hereby deleted in its entirety, and replaced with the following text:

"22.B. General Liability Insurance and Workers' Compensation

(a) During the Term of this Agreement, and any Extension Terms, Permittee will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance shall afford protection of up to Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Permittee's CGL insurance shall contain a provision including Permitter as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Permittee, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Permitter, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Permitter, its employees, agents or independent contractors; and

(iii) shall not exceed Permittee's indemnification obligation under this Agreement, if any.

(b) Notwithstanding the foregoing, Permittee shall have the right to self-insure the coverages required in subsection (a). In the event Permittee elects to self-insure its obligation to include Permitter as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

(i) Permitter shall promptly and no later than thirty (30) days after notice thereof provide Permittee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Permittee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Permitter shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Permittee; and

(iii) Permitter shall fully cooperate with Permittee in the defense of the claim, demand, lawsuit, or the like."

7. Effective Date; Approval. This Second Amendment shall become effective (the "Effective Date") when the County Board of Supervisors adopts a resolution authorizing the execution of this Second Amendment and the Second Amendment is duly executed and delivered by Permittee and Permitter.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECOND AMENDMENT, PERMITTEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF COUNTY HAS AUTHORITY TO COMMIT COUNTY HERETO UNLESS AND UNTIL THE COUNTY BOARD OF SUPERVISORS HAS ADOPTED A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF PERMITTEE AND PERMITTOR PURSUANT TO THIS SECOND AMENDMENT ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS SECOND AMENDMENT SHALL BE NULL AND VOID UNLESS THE BOARD OF SUPERVISORS ADOPTS A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. APPROVAL OF THIS SECOND AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

8. Notice Information. Section 4 of the Agreement is revised to reflect the following current address and contact information for the parties:

Notice Address for County:	Assistant County Manager 400 County Center Redwood City, CA 94063 Fax No.: (650) 363-4832
Key Contact for County:	Real Property Services Manager 555 County Center, 4 th Floor Redwood City, CA 94063
County Contact Telephone No.:	(650) 363-4047
Notice Address for Permittee:	New Cingular Wireless PCS, LLC Attn: Network Real Estate Administration Re: Cell Site #: CCL01794 Search Ring Name: Bay Rd. & University Ave. Cell Site Name: Bay Rd. & University Ave. (CA) Fixed Asset #: 10097007 575 Morosgo Dr. NE Suite 13F, West Tower Atlanta, GA 30324
With a copy to AT&T Legal Department:	New Cingular Wireless PCS, LLC Attn: AT&T Legal Department – Network Ops Re: Cell Site #: CCL01794 Search Ring Name: Bay Rd. & University Ave. Cell Site Name: Bay Rd. & University Ave. (CA) Fixed Asset #: 10097007 208 S. Akard St. Dallas, TX 75202

9. Counterparts. This Second Amendment may be executed in two counterparts, each of which shall be deemed an original, but both of which taken together shall constitute one and the same instrument.
10. Definitions. Any capitalized term not defined herein shall have the same meaning as provided in the Permit as Amended.

11. No Further Amendments; Conflicts. All the terms and conditions of the Agreement remain in full force and effect except as expressly provided in this Second Amendment. The Agreement constitutes the entire agreement between Permitter and Permittee regarding the Premises and may not be modified except by an instrument in writing duly executed by the Permitter and Permittee. In the event of any conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

Permitter and Permittee have executed this Second Amendment to be legally bound as of the date first written above.

PERMITTOR:

COUNTY OF SAN MATEO,
a political subdivision of the State of California

By: _____
Warren Slocum
President, Board of Supervisors

PERMITTEE:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Name: _____ Michael Guibord

Its: _____ Director
Construction Engineering

Attest:

Clerk of the Board

Resolution No.: _____