

ORDINANCE 745 N.S.
AN ORDINANCE APPROVING AMENDED LEASE WITH
NEW CINGULAR WIRELESS PCS, LLC (AT&T)
FOR AN EXISTING WIRELESS COMMUNICATION FACILITY
AT 120 VISTA AVENUE

The City Council of the City of Piedmont ordains as follows.

SECTION 1.

By adopting this ordinance, the City of Piedmont City Council intends to approve and implement the second amendment to the Microcell Site Lease with New Cingular Wireless PCS, LLC telephone company, located on the City communications tower on top of the Piedmont Fire Station.

SECTION 2.

The second amendment to the Microcell Site Lease between the City of Piedmont and New Cingular Wireless PCS, LLC, a copy of which is attached hereto and incorporated herein by reference, is hereby adopted as part of this ordinance pursuant to Section 2.11(6) of the Piedmont City Charter.

SECTION 3.

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading.

I certify that the foregoing ordinance was passed and adopted as a part of the consent calendar by Resolution 25-19 at the regular meeting of the City Council of the City of Piedmont on May 20, 2019, by the following vote:

Ayes:	Andersen, Cavenaugh, McBain, Rood
Noes:	None
Absent:	King

Attest: _____
John O. Tulloch, City Clerk

Market: SF/SAC
Cell Site Number: CCL03977
Cell Site Name: AWE-DT Piedmont
Fixed Asset Number: 10087900

SECOND AMENDMENT TO MICROCELL SITE LEASE

THIS SECOND AMENDMENT TO MICROCELL SITE LEASE (the “**Second Amendment**”), dated as of the latter of the signature dates below (“**Effective Date**”), is by and between The City of Piedmont, a California municipal corporation, having a mailing address of 120 Vista Avenue, Piedmont, CA 94611 (“**Lessor**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor in interest to Bay Area Cellular Telephone Company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (“**Lessee**”).

WHEREAS, Lessor and Lessee entered into a Microcell Site Lease dated April 29, 1999, as amended by the First Amendment to Microcell Site Lease dated August 19, 2002 (collectively, the “**Lease**”), whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 120 Vista Avenue, Piedmont, CA 94611 (“**Site**”); and

WHEREAS, Lessor anticipates that a new communications tower will be constructed at the Site (“**New Tower**”), and that the existing communications tower on the Site will be demolished; and

WHEREAS, Lessor and Lessee anticipate that upon the completion of the New Tower, Lessee will desire to relocate its communications equipment to the New Tower; and

WHEREAS, Lessor and Lessee desire to amend the Lease to extend the term of the Lease; and

WHEREAS, Lessor and Lessee desire to adjust the Base Rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Lessor and Lessee desire to amend the Lease to permit Lessee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Term.** The current term is hereby extended to May 1, 2026.
2. **Rent.** Commencing on August 1, 2019 (the “**Amended Rent Commencement Date**”),

Lessee shall pay to Lessor Base Rent of Two Thousand Nine Hundred Fifty-One Dollars and 65/100 (\$2,951.65). On each anniversary of the Amended Rent Commencement Date, the Base Rent shall increase in accordance with Section 3(c) of the Lease.

3. Payment for Expenses. As consideration for Lessor's execution of this Second Amendment, Lessee shall pay to Lessor a sum not to exceed Two Thousand Dollars (\$2,000.00) to defray Lessor's reasonable staff time, legal fees, and incidental expenses incurred by Lessor for work performed in connection with this Second Amendment. Lessor will present Lessee with an itemized invoice for such fees and expenses within thirty (30) days of full execution of this Second Amendment, and Lessee shall pay the invoice within thirty (30) days of receipt of such invoice by Lessee.

4. Termination. The parties hereto shall make a good faith effort to secure Lessee's ability to continue operation on the Site. In the event that construction of the New Tower has not commenced before May 1, 2025, the parties agree to negotiate in good faith to further extend the term of this Lease or enter into a mutually agreeable new lease. Lessee shall be responsible for initiating such negotiations. Upon the completion of the construction of the New Tower, Lessor may terminate the Lease, as amended by this Second Amendment, upon one hundred twenty (120) days' written notice to Lessee.

5. Notices. Section 16 of the Lease is hereby deleted in its entirety and replaced with the following: **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessor: City of Piedmont
 120 Vista Avenue
 Piedmont, CA 94611

If to Lessee: New Cingular Wireless PCS, LLC
 Attn: Tower Asset Group – Lease Administration
 Cell Site Number: CCL03977
 Cell Site Name: DT Piedmont (CA)

 Fixed Asset Number: 10087900
 1025 Lenox Park Blvd. NE
 3rd Floor
 Atlanta, GA 30319

With a required copy to AT&T Legal Department:

New Cingular Wireless PCS, LLC
Attn: Legal Department- Network Operations
Cell Site Number: CCL03977
Cell Site Name: DT Piedmont(CA)

Fixed Asset Number: 10087900
208 S. Akard Street
Dallas, TX 75202

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

6. Emergency 911 Service. In the future, without the payment of additional Base Rent and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, provided such additions, modifications, and/or replacements are wholly contained within the Premises as defined by the Lease. In the event such additions, modifications, and/or replacements will result in Lessee using additional space in the equipment shed or on the existing communications tower, Lessee shall first apply for and obtain any necessary permits or authorizations required by federal, state, or local laws or ordinance, and the parties hereto shall amend the Lease to reflect the expansion of use, and negotiate new Base Rent terms. If the parties hereto are unable to mutually agree on new Base Rent terms, the Base Rent shall be increased by the percentage amount equivalent to the percentage increase in space to be used by Lessee as a result of the addition, modification, and/or replacement.

7. Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment.

8. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be effective as of the last date written below.

LESSOR:

**City of Piedmont,
a municipal corporation**

LESSEE:

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

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

John O. Tulloch, City Clerk

Approved as to form and legality:

Michelle Marchetta Kenyon, City Attorney
Sergio Rudin, Assistant City Attorney