

ORDINANCE NO. 2018-041

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE FOURTH AMENDMENT TO THE LEASE AGREEMENT BY AND BETWEEN THE CITY OF COCONUT CREEK AND T-MOBILE SOUTH LLC WHICH PROVIDES FOR THE CONTINUED LEASING OF CITY LAND FOR A COMMUNICATIONS TOWER AND A MODIFICATION FOR INSTALLATION OF A NEW 48 KILOWATT GENERATOR WITHIN THE EXISTING SPACE AND REMOVAL OF THE EXISTING SIX FOOT FENCE AND INSTALLATION OF AN EIGHT FOOT FENCE TO CONCEAL THE NEW GENERATOR; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 8, 2008, the City of Coconut Creek (“City”) approved Ordinance No. 2008-019, authorizing the Mayor to execute a lease agreement (“Agreement”) between the City and T-Mobile South, LLC (“T-Mobile”) to lease a portion of City-owned land located at the City’s Winston Park, 5201 NW 49th Avenue, Coconut Creek, FL, more fully described in the Agreement, for the purpose of constructing and maintaining a communications tower (“Tower”) and related equipment; and

WHEREAS, on November 13, 2008, the City approved Ordinance No. 2008-038, authorizing the Mayor to execute the First Amendment to the Agreement (“First Amendment”), which provided for modification of the Exhibits to the Agreement; and

WHEREAS, on July 14, 2016, the City approved Ordinance No. 2016-29, authorizing the Mayor to execute the Second Amendment, which provided for modifications and increases to the amount of equipment on the Tower in exchange for increased rent payments to the City; and

WHEREAS, on January 11, 2017, the City approved Ordinance No. 2017-052, authorizing the Mayor to execute the Third Amendment, which provided for a modification and increased the amount of T-Mobile’s equipment on the Tower, which did not increase

T-Mobile's loading factor on the Tower; and

WHEREAS, currently, T-Mobile desires to amend the Agreement a fourth time ("Fourth Amendment") to install a new 48 kilowatt generator within the existing space, remove the existing six (6') foot fence and install a new eight (8') foot fence to conceal the new generator; and

WHEREAS, the City Commission of the City of Coconut Creek, Florida, finds and determines it to be in the best interests of the residents of the City to enter into such Fourth Amendment to the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: Ratification. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance. All Exhibits attached hereto are incorporated herein and made a specific part of this ordinance.

Section 2: That the City Commission has reviewed and hereby approves that certain Fourth Amendment to the Agreement dated May 8, 2008, the First Amendment dated November 13, 2008, the Second Amendment dated July 14, 2016, and the Third Amendment dated January 11, 2017, attached hereto and made a part hereof as Exhibit "A," by and between the City and T-Mobile South LLC, providing for the installation of a new 48 kilowatt generator within the existing space, removal of the existing six (6') foot fence and installation of a new eight (8') foot fence to conceal the new generator, a legal description of the land is attached hereto and made a part hereof as Exhibit "B," and hereby authorizes the Mayor to execute said Fourth Amendment to the original lease Agreement on behalf of the City. The original lease Agreement, the First Amendment, the Second Amendment, and the Third Amendment are attached hereto and made a part hereof as Exhibit "C," Exhibit "D," Exhibit "E," and Exhibit "F," respectively.

Section 3: That the term of the original lease Agreement was for a period of ten (10) years from May 8, 2008, with two (2) automatic five (5) year renewals (unless T-Mobile South LLC advises the City of its intent not to renew at least six (6) months prior to the end of the then current term).

Section 4: That a copy of this ordinance, along with Exhibit "B," the legal description of the land hereby leased, is to be recorded in the public records of Broward County, Florida. Exhibit "A," which is the Fourth Amendment to the original lease

Agreement attached to this ordinance, Exhibit "C," which contains the original lease Agreement dated May 8, 2008, Exhibit "D," which contains the First Amendment dated November 13, 2008, Exhibit "E," which contains the Second Amendment dated July 14, 2016, and Exhibit "F," which contains the Third Amendment dated January 11, 2017, are not to be recorded.

Section 5: Conflicts. That all ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 6: Severability. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, clause or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part hereof other than the part declared invalid.

Section 7: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 13TH DAY OF DECEMBER, 2018.

PASSED SECOND READING THIS 24TH DAY OF JANUARY, 2019.

Joshua Rydell, Mayor

Attest:

Leslie Wallace May, City Clerk

	<u>1st</u>	<u>2nd</u>
Rydell	<u>Aye</u>	<u>Aye</u>
Welch	<u>Aye</u>	<u>Absent</u>
Tooley	<u>Aye</u>	<u>Aye</u>
Sarbone	<u>Aye</u>	<u>Aye</u>
Belvedere	<u>Aye</u>	<u>Aye</u>