

ORDINANCE NO. 2019-035

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BY AND BETWEEN THE CITY OF COCONUT CREEK AND NEW CINGULAR WIRELESS PCS, LLC, A WHOLLY OWNED SUBSIDIARY OF AT&T MOBILITY CORPORATION, TO LEASE CERTAIN SPACE WITHIN THE CITY'S WINSTON PARK FOR AN INITIAL TERM OF TEN (10) YEARS WITH THE TENANT'S RIGHT TO EXTEND FOR THREE (3) SUCCESSIVE FIVE (5) YEAR PERIODS UNDER SPECIFIC TERMS AND CONDITIONS; PROVIDING FOR RECORDATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns a telecommunications tower ("Tower") within the City's Winston Park, located at 5201 NW 49 Avenue, Coconut Creek, FL 33073; and

WHEREAS, currently, the only tenant occupying space on the Tower is T-Mobile, and as a result of numerous citizen inquiries, the City has become aware that there is a great demand for more comprehensive service from customers of AT&T in that area; and

WHEREAS, New Cingular Wireless PCS, LLC, owned by AT&T Mobility Corporation, as its sole manager, (hereinafter "AT&T"), approached the City's Tower Manager, CityScape Consultants Inc., and expressed its desire to lease space on the Tower together with a portion of the City's land adjacent to the Tower to construct, maintain and operate a communications facility; and

WHEREAS, several months of negotiation and site planning have resulted in the lease agreement, attached hereto as "Exhibit 1" and incorporated herein, that provides for an initial term of ten (10) years, with automatic extensions of three (3) successive five (5) year periods; and

WHEREAS, the lease agreement specifically grants AT&T five (5) interests in the City's land:

1. Exclusive Lease Premises;
2. Aerial Space at 80 feet above ground level on the Tower;
3. Non-Exclusive Ground Easement to enclose the Tower (with a fence barrier to be installed and maintained by AT&T, at its cost);
4. Non-Exclusive Utility Easement (that already exists under the T-Mobile lease agreement);
5. Non-Exclusive Access Easement along the City's roadway that traverses Winston Park (also provided within the T-Mobile lease agreement); and

WHEREAS, pursuant to the lease agreement, the City, through its Tower Manager, is entitled to \$36,500 per year payable in equal monthly installments, with an automatic annual increase of three percent (3%), beginning at the appointed commencement date; and

WHEREAS, the City Commission of the City of Coconut Creek, Florida, finds and determines that it is in the best interest of the residents of the City to enter into such lease agreement with AT&T; and

WHEREAS, Section 302 b.2. of the City's Charter provides that the Mayor shall sign all instruments of writing relating or pertaining to real estate, and as this is a lease of the City's real property, City staff recommends that the Mayor execute same.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF COCONUT CREEK HEREBY ORDAINS:

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. Exhibit 1, along with its attachments, attached hereto is incorporated herein and made a specific part of this ordinance.

Section 2: That the City Commission hereby authorizes the lease of the City's real property to AT&T, as specifically provided in the lease agreement by and between the City of Coconut Creek and New Cingular Wireless PCS, LLC, owned by AT&T Mobility Corporation, as its sole manager, attached hereto as "Exhibit 1."

Section 3: That the Mayor is hereby authorized to execute said lease agreement on behalf of the City.

Section 4: 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 5: 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 6: Effective Date. That this ordinance shall become effective upon its passage on second and final reading.

PASSED FIRST READING THIS 26TH DAY OF SEPTEMBER, 2019.

PASSED SECOND READING THIS 10TH DAY OF OCTOBER, 2019.

Sandra L. Welch, Mayor

Attest:

Leslie Wallace May, City Clerk

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