

ORDINANCE NO. 2023-031

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR, OR DESIGNEE, TO EXECUTE THE FIRST AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND T-MOBILE SOUTH, LLC TO UPGRADE EQUIPMENT WITHIN THE EXISTING LEASED SPACE AND WITHIN CONCEALED CANISTERS ON THE CITY'S TELECOMMUNICATIONS TOWER LOCATED AT THE COMMUNITY CENTER, SUBJECT TO ALL OTHER TERMS AND CONDITIONS PROVIDED THEREIN; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City owns the telecommunications tower ("Tower") within the City-owned complex known as the Community Center, located at 1100 Lyons Road, Coconut Creek, Florida 33063, and leases aerial and ground space to interested tenants; and

WHEREAS, as of June 23, 2016, the City and T-Mobile South, LLC (hereinafter "T-Mobile") have a valid lease agreement ("Lease Agreement") to lease aerial 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, through this First Amendment, the parties desire to amend the Lease Agreement to grant T-Mobile the ability to upgrade its equipment at the site and clarify several provisions within the Lease Agreement; and

WHEREAS, CityScape Consultants, Inc., the City's consultant for wireless communications and site management, has analyzed the proposed modifications by T-Mobile and has recommended no rental increase after consideration of several factors, including, but not limited to, the fact that the changes will not increase the loading upon the Tower, nor expand the ground space occupied by T-Mobile; and

WHEREAS, the First Amendment to the Lease Agreement (“First Amendment”) sets forth the dimensions of the occupied ground space, the path of the ice-bridge that is used to connect T-Mobile’s ground space to the Tower, the non-exclusive underground utility easement from the nearest right-of-way, the aerial space where T-Mobile’s equipment will be located within the concealed canisters of the Tower, and further clarifies other portions of the Lease Agreement, as more specifically detailed in the First Amendment, attached hereto as “Exhibit 1” and incorporated herein; and

WHEREAS, the First Amendment also clarifies T-Mobile’s responsibility to sign and record in the Official Records of Broward County, Florida, at its expense, a fully-executed version of the Memorandum of Agreement between the parties, which was not done previously; and

WHEREAS, the City recognizes the fast pace at which communications services and corresponding technology is evolving, and is conscious of the community benefits that will flow from an approval of this First Amendment without further delay; and

WHEREAS, the City Commission of the City of Coconut Creek, Florida, finds and determines that it is in the best interests of the residents of the City to execute the First Amendment to the Lease Agreement with T-Mobile at the Community Center Tower; 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, as this is an amendment to an existing 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. The First Amendment to the Lease Agreement between the City of Coconut Creek, Florida and T-Mobile South, LLC is attached hereto as “Exhibit 1,” along with its exhibits, and is incorporated herein and made a specific part of this ordinance.

Section 2: Amendment to Lease. That the City Commission hereby authorizes the First Amendment to the Lease Agreement that modifies the equipment and provides other terms and conditions as more specifically described in the First Amendment to the Lease Agreement by and between the City of Coconut Creek and T-Mobile South, LLC, attached hereto as "Exhibit 1."

Section 3: Charter Requirement. That the Mayor, or designee, is hereby authorized to execute said First Amendment to the 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 12TH DAY OF OCTOBER, 2023.

PASSED SECOND READING THIS _____ DAY OF _____, 2023.

Joshua Rydell, Mayor

Attest:

Joseph J. Kavanagh, City Clerk

	<u>1st</u>	<u>2nd</u>
Rydell	<u>Aye</u>	_____
Welch	<u>Aye</u>	_____
Railey	<u>Aye</u>	_____
Brodie	<u>Aye</u>	_____
Wasserman	<u>Aye</u>	_____