

ENROLLED ORDINANCE 170-23

APPROVE REVISED 2ND AMENDMENT TO OLD HEALTH AND HUMAN SERVICES BUILDING SMOKESTACK CELLULAR TOWER LEASE

WHEREAS, pursuant to a December 1, 1998 Lease, as amended, with Milwaukee SMSA Limited Partnership d/b/a New Cingular Wireless PCS, LLC (“New Cingular”), the County leases space to New Cingular on the Old Health and Human Services Building Smokestack for use as a cellular tower, and

WHEREAS, New Cingular wishes to make upgrades to antennas and related equipment on the smokestack, and

WHEREAS, the County is willing to permit the upgrades provided that a Five Thousand Five Hundred Thirty-Eight and 00/100 Dollar (\$5,538.00) increase in the annual rental rate is made to the Lease and the termination provision of the Lease is amended to provide flexibility to the County in the event that termination becomes necessary or desirable, and

WHEREAS, the County Board previously approved these changes to the Lease through Enrolled Ordinance 169-88, however, prior to execution of the approved second amendment to the Lease, New Cingular requested additional modifications to the timing requirements contained in the amended termination provision, and

WHEREAS, the County is agreeable to such further changes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the revised second amendment to the December 1, 1998 Lease with Milwaukee SMSA Limited Partnership d/b/a New Cingular Wireless PCS, LLC for use of the Old Health and Human Services Building Smokestack as a cellular tower permitting upgrades to antennas and related equipment, increasing the amount of annual rent by Five Thousand Five Hundred Thirty-Eight and 00/100 Dollars (\$5,538.00), and further modifying the termination provision of the Lease (the “Second Amendment”) on file with the Department of Emergency Preparedness is in all respects approved.

BE IT FURTHER ORDAINED that the Director of Emergency Preparedness or his designee is authorized to execute the Second Amendment and any other documents necessary to effectuate the intent thereof.

FISCAL NOTE

APPROVE REVISED 2ND AMENDMENT TO OLD HEALTH AND HUMAN SERVICES
BUILDING SMOKESTACK CELLULAR TOWER LEASE

This ordinance approves an amendment to an existing agreement (the current term runs through Nov. 2018, with the option to extend through Nov. 2023) between the County and New Cingular Wireless PCS, LLC for lease of the Old HHS building smokestack for use as a cellular tower. The amendment will allow for the installation of upgraded antennas and related equipment in exchange for an increased rental rate. The County will receive an additional \$5,538 annually, bringing the total rent received from New Cingular to \$42,066 in 2015.

The lease agreement contains a provision to permit the County to terminate if the status of the building changes.


This ordinance results in no additional direct tax levy impact.

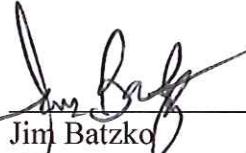


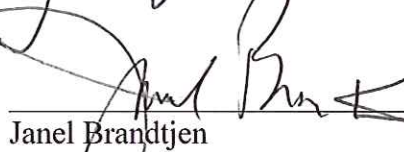
Linda G. Witkowski
Budget Manager
5/5/2015

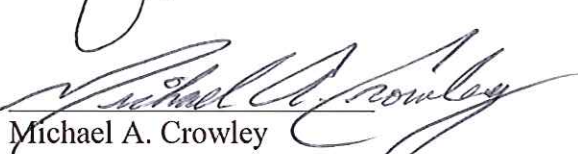
APPROVE REVISED 2ND AMENDMENT TO OLD HEALTH AND HUMAN SERVICES BUILDING SMOKESTACK CELLULAR TOWER LEASE

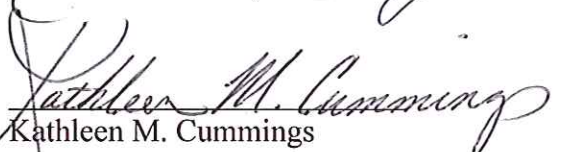
Approved By:
Judiciary & Law Enforcement Committee


Peter M. Wolff, Chair

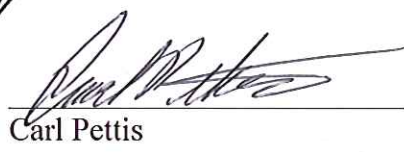

Jim Batzko


Janel Brandtjen


Michael A. Crowley


Kathleen M. Cummings

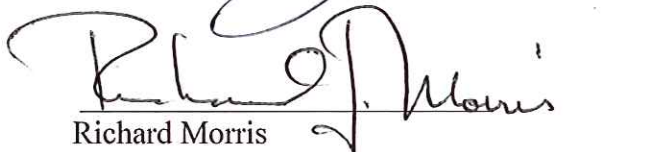

Robert L. Kolb

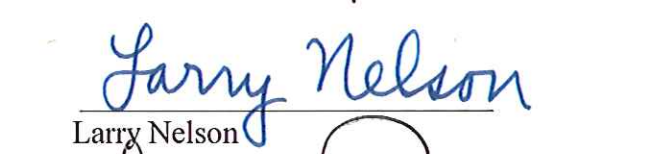

Carl Pettis

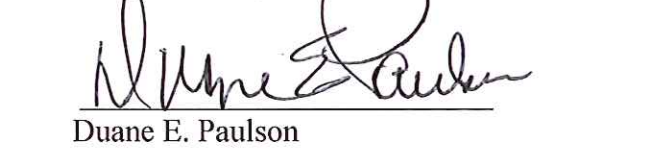
Approved By:
Finance Committee



James A. Heinrich, Chair


Eric Highum


Richard Morris



Larry Nelson


Duane E. Paulson


absent
Steve Whittow


William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 5/26/2015, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 5-28-15, 
Paul Farrow, County Executive

EXECUTION COPY

Market: IL/WI
Cell Site Number: WI0159
Cell Site Name: Downtown Waukesha
Fixed Asset Number: 10011988

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (“**Second Amendment**”), dated as of the latter of the signature dates below, is by and between Waukesha County, Wisconsin, a municipal corporation, having a mailing address of 515 W. Moreland Blvd., Waukesha, Wisconsin 53188 (“**County**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to Milwaukee SMSA Limited Partnership, having a mailing address of 575 Morosgo Dr. NE, Atlanta, GA 30324 (“**Lessee**”).

WHEREAS, County and Lessee, or their predecessor in interest, entered into a Lease dated December 1, 1998, as amended by that certain First Amendment to Lease dated June 26, 2012, whereby County leased to Lessee certain Premises, therein described, that are a portion of the Property located at 500 Riverview Avenue, Waukesha, WI 53188 (“**Lease**”); and

WHEREAS, the First Amendment to Lease dated June 26, 2012, incorrectly references the Lease that was executed on May 1, 2001, and subsequently terminated by the Release and Settlement Agreement dated April 4, 2007. The terms of said First Amendment to Lease are still valid and it shall be construed as an amendment to the Lease dated December 1, 1998.

WHEREAS, County and Lessee desire to amend the Lease to permit Lessee to add, modify, and/or replace equipment; and

WHEREAS, Lessee desires to change, modify or relocate the Antenna Facility, which County is willing to approve so long as the Lease is otherwise amended as required hereby; and

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

WHEREAS, County 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, County and Lessee agree as follows:

1. **Leased Property.** County consents to the installation and operation of the additional antennas, associated cables and equipment described on the attached Exhibit B-2 (the “**Additional Equipment**”). County’s execution of this Amendment will signify County’s approval of Exhibit B-2. Exhibit B-2 hereby replaced Exhibit B-1 to the Lease.

EXECUTION COPY

2. **Rent.** Commencing on the first day of the month following the date that the Lessee commences construction of the modifications as set forth in this Amendment, Rent shall be increased by Five Thousand Five Hundred Thirty-Eight and 00/100 Dollars (\$5,538.00) per year, subject to further adjustments as provided in the Lease. Upon Lessee's removal of the Additional Equipment, Rent will revert to the original rate, subject to adjustments as provided in the Lease, upon thirty (30) days' prior written notice to County. On the first anniversary date of the Lease after the execution of this Amendment, Lessee shall pay County, in addition to its regular prospective annual payment due under the Lease as amended, the prorated amount of any additional rent sums due for calendar year 2015 pursuant to this Amendment.

3. **Notices.** Section 24 of the Lease is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, and demands 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 Lessee: New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation,
Attn: Network Real Estate Administration
Re: Cell Site #: WI0159, Cell Site Name: Downtown Waukesha (WI),
FA No: 10011988
575 Morosgo Dr. NE,
Atlanta, GA 30324

With the required copy of legal notice sent to Lessee at the address above, a copy to the Legal Department: New Cingular Wireless PCS, LLC
Attn: Legal Department,
Re: Cell Site #: WI0159, Cell Site Name: Downtown Waukesha (WI),
FA No: 10011988
208 S. Akard Street
Dallas, TX 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to County: Waukesha County Department of Administration Radio Services
Attn: Chris Petterson
2120 Davidson Road
Waukesha, Wisconsin 53816

With a copy to: Waukesha County Corporation Counsel
Attn: Erik G. Weidig, Esq.
515 W. Moreland Blvd., Room AC-330
Waukesha, WI 53188

EXECUTION COPY

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.

4. **Termination.** Section 11 of the Lease is hereby deleted in its entirety and replaced with the following:

Default and Termination

- (a) If either party is in default under this Lease and such default is not cured within thirty (30) days following receipt of notice of such default from the non-defaulting party, this Lease may be terminated by the non-defaulting party by written notice of such termination. Upon termination of this Lease, Lessee shall remove its property from the premises within thirty (30) days. If the property of Lessee is not removed within thirty (30) days, the County shall have the right to remove and store the property, at Lessee's expense. The County shall not be liable for any damage to Lessee's property. Lessee will be responsible for all costs incurred by the County associated with the removal and restoration of Lessee's property. The County will not release Lessee's property until the County has received payment for all removal and/or storage costs incurred.
- (b) This Lease may be cancelled for any reason by the Lessee upon ninety (90) days written notification to the County and by payment of twelve months rent, beginning with the effective date of cancelation.
- (c) This Lease may be cancelled by the County if the County intends to raze and/or remove from the premises the building and smokestack upon which the Lessee's equipment is located upon the County providing twelve (12) months written notification to the Lessee of the intended commencement date of the razing/removal activities. If such right is exercised by the County, notwithstanding any other provision of this Lease, Lessee shall remove all of its property from the premises no later than ninety (90) days after the date of receipt of the notice, which shall be deemed the termination date of the Lease. If the property of Lessee is not removed prior to the termination date, the County shall have the right to remove and store the property, at Lessee's expense. The County shall not be liable for any damage to Lessee's property. Lessee will be responsible for all costs incurred by the County associated with the removal and restoration of Lessee's property. The County will not release Lessee's property until the County has received payment for all removal and/or storage costs incurred. If the County exercises its right to cancel the Lease under this paragraph, Lessee shall be entitled to a reimbursement of any annual rent already paid for the terminated portion of the Lease term. The County may offset any amounts owed by Lessee for the removal and storage of property under this paragraph against any reimbursement of annual rent due Lessee.

5. **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.

EXECUTION COPY

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

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Second Amendment on the dates set forth below.

“County”
Waukesha County, Wisconsin,
a municipal corporation

By: _____
Name: Gary Bell
Title: Director, Dept. of Emergency Preparedness
Date: _____

“Lessee”
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____

EXECUTION COPY

LESSEE ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the _____ day of _____ in the year 201__ before me, the undersigned, a notary public in and for said state, personally appeared _____, the _____ [title] of AT&T Mobility Corporation, Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company described herein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

COUNTY ACKNOWLEDGEMENT

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

I CERTIFY that on _____, 201__, Gary Bell personally came before me and acknowledged under oath that he:

- (a) is the Director of the Department of Emergency Preparedness for Waukesha County, the lessor named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of Waukesha County and
- (c) executed the instrument as the act of Waukesha County.

Notary Public
My Commission Expires: _____

**EXHIBIT B-2
“Additional Equipment”**

See attached Construction Drawings comprised of thirteen (13) pages, last revision date of July 31, 2014, prepared by Fullerton Engineering Design

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

ENROLLED ORDINANCE 169-88

APPROVE AMENDMENT TO OLD HEALTH AND HUMAN SERVICES
BUILDING SMOKESTACK CELLULAR TOWER LEASE

WHEREAS, pursuant to a December 1, 1998 Lease, as amended, with Milwaukee SMSA Limited Partnership d/b/a New Cingular Wireless PCS, LLC ("New Cingular"), the County leases space to New Cingular on the Old Health and Human Services Building Smokestack for use as a cellular tower, and

WHEREAS, New Cingular wishes to make upgrades to antennas and related equipment on the smokestack, and

WHEREAS, the County is willing to permit the upgrades provided that a Five Thousand Five Hundred Thirty-Eight and 00/100 Dollar (\$5,538.00) increase in the annual rental rate is made to the Lease and the termination provision of the Lease is amended to provide flexibility to the County in the event that termination becomes necessary or desirable, and

WHEREAS, New Cingular is agreeable to such changes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the second amendment to the December 1, 1998 Lease with Milwaukee SMSA Limited Partnership d/b/a New Cingular Wireless PCS, LLC for use of the Old Health and Human Services Building Smokestack as a cellular tower permitting upgrades to antennas and related equipment, increasing the amount of annual rent by Five Thousand Five Hundred Thirty-Eight and 00/100 Dollars (\$5,538.00), and modifying the termination provision of the Lease (the "Second Amendment") on file with the Department of Emergency Preparedness is in all respects approved.

BE IT FURTHER ORDAINED that the Director of Emergency Preparedness is authorized to execute the Second Amendment and any other documents necessary to effectuate the intent thereof.

File Number: 169-O-090

FISCAL NOTE

APPROVE AMENDMENT TO OLD HEALTH AND HUMAN SERVICES BUILDING
SMOKESTACK CELLULAR TOWER LEASE

This ordinance approves an amendment to an existing agreement between the County and New Cingular Wireless PCS, LLC for lease of the old Health and Human Services building smokestack for use as a cellular tower. The amendment will allow for the installation of upgraded antennas and related equipment in exchange for an increased rental rate. The County will receive an additional \$5,538 annually, bringing the total rent received from New Cingular for this agreement to \$42,066 in 2015.

The lease agreement contains a provision to permit the County to terminate if the status of the building changes.

This ordinance results in no additional direct tax levy impact.



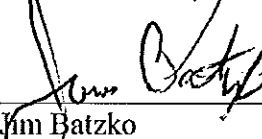
Linda G. Witkowski
Budget Manager
11/25/2014


File Number: 169-O-090

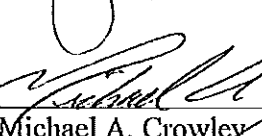
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BUILDING SMOKESTACK CELLULAR TOWER LEASE

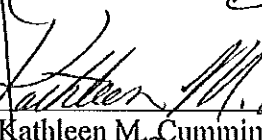
Approved By:
Judiciary & Law Enforcement Committee

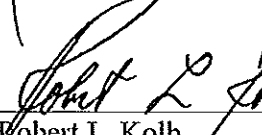

Peter M. Wolf, Chair

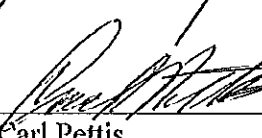

Jim Batzko


Janel Brandtjen

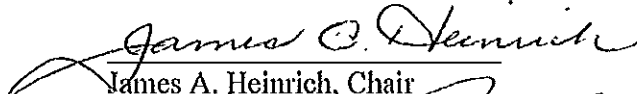

Michael A. Crowley

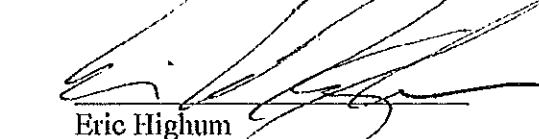

Kathleen M. Cummings

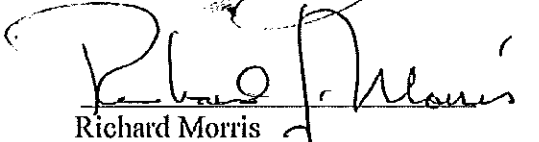

Robert L. Kolb

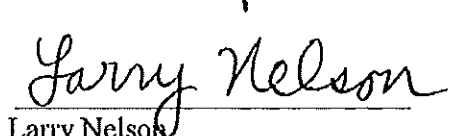

Carl Pettis

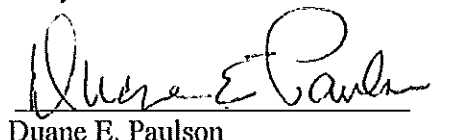
Approved By:
Finance Committee

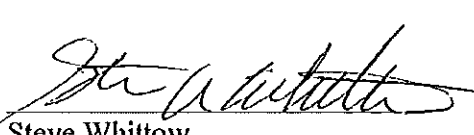

James A. Heinrich, Chair

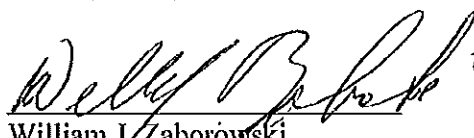

Eric Highum


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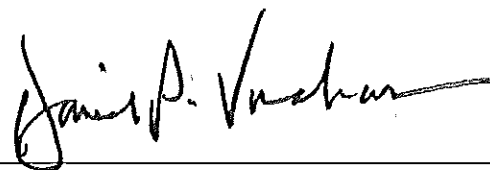

William J. Laborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 12/16/14, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 12-22-14, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-12/16/14

(ORD) NUMBER-1690090

- | | |
|--------------------------|--------------------------|
| 1 R. KOLB.....AYE | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE | 4 J. BATZKO.....AYE |
| 5 J. BRANDTJEN.....AYE | 6 J. WALZ.....AYE |
| 7 J. GRANT.....AYE | 8 E. HIGHUM.....AYE |
| 9 J. HEINRICH.....AYE | 10 D. SWAN.....AYE |
| 11 C. HOWARD.....AYE | 12 P. WOLFF.....AYE |
| 13 P. DECKER.....AYE | 14 C. PETTIS.....AYE |
| 15 B. MITCHELL.....AYE | 16 M. CROWLEY.....AYE |
| 17 D. PAULSON.....AYE | 18 L. NELSON.....AYE |
| 19 K. CUMMINGS.....AYE | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE |
| 23 K. HAMMITT.....AYE | 24 S. WHITTOW.....AYE |
| 25 G. YERKE.....AYE | |

TOTAL AYES-25

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-25

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/26/15 (ORD) NUMBER-1700023

- | | |
|--------------------------|-------------------------|
| 1 R. KOLB.....AYE | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE | 4 J. BATZKO.....AYE |
| 5 J. BRANDTJEN.....AYE | 6 J. WALZ.....AYE |
| 7 J. GRANT.....AYE | 8 E. HIGHUM.....AYE |
| 9 J. HEINRICH.....AYE | 10 D. SWAN.....AYE |
| 11 C. HOWARD.....AYE | 12 P. WOLFF.....AYE |
| 13 P. DECKER.....AYE | 14 C. PETTIS.....AYE |
| 15 B. MITCHELL.....AYE | 16 M. CROWLEY.....AYE |
| 17 D. PAULSON.....AYE | 18 L. NELSON.....AYE |
| 19 K. CUMMINGS.....AYE | 20 T. SCHELLINGER...AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE |
| 23 K. HAMMITT.....AYE | 24 S. WHITTOW.....AYE |
| 25 G. YERKE.....AYE | |

TOTAL AYES-25

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-25