

ORDINANCE NO. 47-24

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN
AMENDED WATER TOWER LEASE WITH CLEVELAND COMMUNICATIONS INC.
TO LEASE EQUIPMENT AND SPACE ON THE AVON WATER TOWER
LOCATED AT 4859 CENTER ROAD FOR THE PURPOSE OF INSTALLING
NECESSARY ANTENNAS AND TO PROVIDE THE NEEDED HARDWARE TO
FACILITATE COMMUNICATIONS BETWEEN SAFETY FORCES IN THE
CITY OF AVON AND OTHER LOCAL JURISDICTIONS
AND DECLARING AN EMERGENCY**

WHEREAS, The City of Avon, hereinafter referred to as the “Lessor” or the “Agency”, and Cleveland Communications Incorporated, hereinafter known as the “Lessee” or “CCI”, entered into a Water Tower Lease Agreement on or about June 29, 2021, pursuant to Ordinance No. 45-21, passed on June 28, 2021; and

WHEREAS, this lease, among other things, authorized the Lessor to lease to the Lessee “...three (3) FCC Licenses for the operation of the communication system contemplated...” in that lease agreement (See Paragraph 18 of the Water Tower Lease); and

WHEREAS, the parties now desire to amend that lease agreement to ensure that the City of Avon, as the subscriber Agency of three licenses from Federal Communications Commission (“FCC”) and CCI memorialize 1) their shared use responsibilities under Rule 90.179 and 2) their delegation of authority for CCI to enter into subcontracting agreements for limited purposes, with third party local governments, i.e., for Police, Fire, EMS, and Dispatching functions; and

WHEREAS, this limited purpose authority ensures that the Agency maintains control of the three FCC licenses and that CCI will enter into subcontract agreements 1) only for permissible purposes, 2) in a permissible manner, and 3) by persons with authority to use and operate such equipment, consistent with FCC Rule 90.403.

WHEREAS, this amendment is executed pursuant to Section 20 of the original Water Tower Lease entitled COMPLETE AGREEMENT, providing for modification only in writing and signed by both parties.; and

WHEREAS, Council, having reviewed the Amended Water Tower Lease with CCI, finds it to be fair and equitable and that authorizing the Mayor to execute same is in the best interests of the health, safety, and welfare of the citizens of Avon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 – That the Mayor is hereby authorized to execute the Amended Water Tower Lease with Cleveland Communications, Inc. covering the Mills Road Water Tower located at 4859 Center Road, in substantially the form as set forth in the attached Exhibit A, which is incorporated herein by this reference.

Section 2 - All other provisions of the contract not amended as set forth in Exhibit A remain in full force and effect.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to enter into an Amended Water Tower Lease with CCI that will facilitate CCI entering into user agreements with eligible third party governments pursuant to FCC Rule 90.179(d); therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: April 1, 2024

DATE SIGNED: April 1, 2024

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: April 8, 2024

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director
City of Avon, Ohio

ATTEST:

Barbara J. Brooks
Barbara J. Brooks, Clerk of Council

Posted: April 10, 2024
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 47-24, passed by the Council of said City on April 1st, 2024.

IN WITNESS WHEREOF, I have on this 9th day of April 2024, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

**AGREEMENT TO AMEND THE
WATER TOWER LEASE
(FOR COMMUNICATIONS EQUIPMENT)**

WHEREAS, the City of Avon, hereinafter referred to as the "Lessor" or the "Agency", and Cleveland Communications Incorporated, an Ohio corporation hereafter known as the "Lessee" or "CCI", entered into a Water Tower Lease Agreement on or about June 29, 2021 (See, Avon City Council Ordinance No. 45-21, specifically, Exhibit A, passed June 28, 2021); and

WHEREAS, this lease, among other things, authorized the Lessor to lease to the Lessee "...three (3) FCC Licenses for the operation of the communication system that is contemplated..." in that lease agreement (See, Paragraph 18 of the original Water Tower Lease, attached to Ord. No. 45-21 as Exhibit A); and

WHEREAS, the parties now desire to amend that lease agreement; and

WHEREAS, the purpose of the amendment is to ensure that the City of Avon, as the subscriber Agency of three licenses from Federal Communications Commission ("FCC"), being leased to CCI, has memorialized 1) the shared use responsibilities under Rule 90.179 for all parties, and 2) the delegation of authority for CCI to enter into subcontracting agreements, for limited purposes, with third party local governments for their use for Police, Fire, EMS, and Dispatching functions, all of whom are identified and listed on Exhibit A,

WHEREAS, this limited purpose authority ensures that the Agency maintains control of the three referenced licenses and that CCI will enter into subcontract agreements 1) only for permissible purposes, 2) in a permissible manner, and 3) by persons with authority to use and operate such equipment, consistent with Rule 90.403.

WHEREAS, this amendment is executed consistent with the terms of the original Agreement, Section 20, entitled COMPELTE AGREEMENT, providing for modification only if put forth in writing and signed by both parties.

NOW, THEREFORE, the above-referenced parties hereby agree to amend Paragraph 18 of the original lease as follows: (New language in **bold print**):

18. FCC CALL SIGNS: As part of this Lease, the Lessor is leasing to Lessee three (3) FCC Licenses for the operation of the communication system that is contemplated herein. Said Licenses are incorporated herein and attached as Exhibit "A".

1. The Agency hereby expressly grants CCI the authority to enter into user agreements only with eligible third-party users of the radio network. Said network will operate as required by FCC Rule 90.179(d).

2. CCI acknowledges that the network is subject to the control of the Agency as required by FCC rules.

3. The Agency and CCI agree that if Lessee obtains additional third-party users of the radio network CCI agrees to incorporate said third parties by amendment into this Agreement. To the extent any third-party user has already entered into an agreement with CCI prior to the execution of this amendment, that third-party user and their agreement is hereby ratified and accepted.

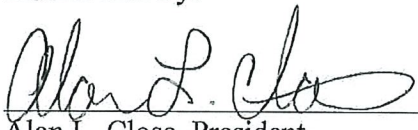
4. The Agency and CCI agree that subsequent third-party users of the radio network will be bound to the Agreement and it will have the same force and effect as if all signatures appeared on one original instrument.

Lessor/Agency By:



City of Avon, Ohio
Bryan K. Jensen, Mayor

Lessee/CCI By:



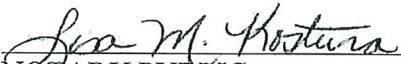
Alan L. Close, President
Cleveland Communications, Inc.
5220 Hauserman Rd.
Parma, OH 44130

Date 4-9-24

Date: 4-1-24

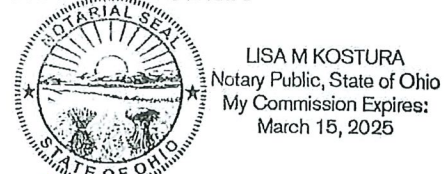
STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

The foregoing instrument was acknowledged before me this 1st day of April, 2024 by Alan Close, President of Cleveland Communications, Inc. on behalf of Cleveland Communications, Inc.



NOTARY PUBLIC

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)



The foregoing instrument was acknowledged before me this 9th day of April, 2024 by Bryan K. Jensen, Mayor of the City of Avon, Ohio on behalf of the City of Avon, Ohio.



Rose Frances Seighman
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
August 2, 2025



NOTARY PUBLIC

EXHIBIT A
(TO THE AMENDED WATER TOWER LEASE)
(ORD. NO. 47-24)

<u>Third Party Users</u>	<u>Agreement Date</u>	<u>FCC License #</u>	<u>Agency Licensee</u>
Avon FD			City of Avon
Avon Lake FD			City of Avon
Avon Lake PD			City of Avon
Elyria FD			City of Avon
Elyria Twp. FD			City of Avon
Lifecare			City of Avon
Lorain 911			City of Avon
North Ridgeville FD			City of Avon
Sheffield Lake FD			City of Avon
Sheffield Lake PD			City of Avon
Sheffield/Sheffield Lake Schools			City of Avon
Sheffield Twp. FD			City of Avon
Sheffield Village FD			City of Avon
Sheffield Village PD			City of Avon
Vermilion FD			City of Avon