

**TOWNSHIP OF WARREN
RESOLUTION NO. 2023-050**

**SECOND AMENDMENT TO ANTENNA TOWER USE AGREEMENT
WITH THE COUNTY OF MORRIS**

WHEREAS, the Township of Warren is the owner of the property identified as Block 83, Lot 3.04 in the Township of Warren, County of Somerset, State of New Jersey, located at 198 Mountain Avenue, commonly known as the Wagner Farm (the “Property”); and

WHEREAS, the Township entered into a Communications Site Lease Agreement dated June 24, 2004 (“Lease Agreement”) with Nextel of New York, Inc. (“Nextel”) for a portion of the Property for the construction of a communications tower and related appurtenances thereon; and

WHEREAS, the Township and Towerco Assets, LLC (“Towerco”) entered into a Memorandum of Agreement dated March 26, 2009, memorializing the assignment of Nextel’s rights, title and interests in the Lease Agreement to Tower Entity 9, LLC (which was acquired and merged into Towerco), which was set forth in the Assignment and Assumption of Ground Lease dated September 23, 2008; and

WHEREAS, Towerco became an affiliate of SBA Communication Corp., which changed its name to SBA 2012 TC Assets, LLC (“SBA”), thereby having assigned all of Towerco’s rights, title and interests in the Lease Agreement to SBA pursuant to Paragraph 14.2 of the Lease Agreement; and

WHEREAS, the Lease Agreement provided that the Township was granted permission to install and locate certain antenna equipment on the communications tower for its emergency services and other communication purposes, as set forth in Section 1.5 of the Lease Agreement; and

WHEREAS, the County of Morris, through the Morris County Communications Division, Department of Law & Public Safety (the “County”), entered into an Antenna/Tower Use Agreement (the “Agreement”) wherein the Township agreed to allow the County to utilize a portion of its allotted space in the tower on the Property pursuant to the Lease Agreement, the County agreed to provide the Township with twenty six (26) multiband radios, including the installation thereof in Township vehicles and communications desk, which has an estimated monetary value of One Hundred Eighty Two Thousand and 00/100 (\$182,000.00) Dollars; in addition to permitting the Township to utilize the frequencies of its antenna equipment to be located and operated at the Property, subject to the approval of SBA; and

WHEREAS, during the SBA’s review of the County’s proposal, it was determined that the design of the County’s communications equipment exceeded that portion of the tower and the Property which was allocated to the Township, and infringed into SBA’s commercial rentable space; and SBA advised that there would be a required rental payment in the amount of \$4,000.00 per month to address the commercial rentable space being utilized or otherwise infringed upon by the County’s communications equipment; and

WHEREAS, the Township and the County negotiated and agreed upon terms where the County would pay the \$4,000.00 per month rental to SBA; however, the Township would waive its portion of the rental amount (being approximately \$1,500.00 per month) for the first five (5) years of the Agreement; and, thereafter, the County would assume the full rental amount for the remainder of the term of the Agreement and any extension of same, which agreement was

memorialized in a First Amendment to Antenna/Tower Use Agreement, last signed on March 1, 2022 (the “First Amendment”); and

WHEREAS, pursuant to SBA’s agreements with the Township and its internal policies and procedures, the Township and the County were advised that all rental payments must be received from the Township, and cannot be received directly from the County; and

WHEREAS, the Township and the County negotiated and agreed upon a Second Amendment to the Antenna/Tower Use Agreement to reflect the fact that the rental payments are to be made from the County to the Township, with the Township to thereafter to remit such payment to SBA, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the Second Amendment to the Antenna/Tower Use Agreement, and the authorizations set forth in this Resolution, are subject to the approval of SBA pursuant to the terms of the Lease Agreement; and

WHEREAS, the Township Committee of the Township of Warren finds it to be in the best interests of the Township to enter into the Second Amendment to the Antenna/Tower Use Agreement with the County of Morris pursuant to the terms and conditions set forth therein.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Warren, County of Somerset, State of New Jersey, as follows:

1. The Township of Warren hereby authorizes and approves the Second Amendment to the Antenna/Tower Use Agreement with the County of Morris.
2. The Mayor, Township Clerk and Township Administrator are hereby authorized to sign and execute and the Second Amendment to the Antenna/Tower Use Agreement, in substantially the form attached hereto, along with any other documents necessary to accomplish same.
3. The appropriate Township officials are authorized to take the necessary action to effectuate and carryout the terms of this Resolution and the terms of the Antenna/Tower Use Agreement, as amended.
4. This Resolution shall take effect immediately.

INTRODUCED	SECONDED	COMMITTEE	AYE	NAY	ABSTAIN	ABSENT
X		LONTAI	X			
		SORDILLO	X			
	X	LAZO	X			
		DINARDO	X			

CERTIFICATION

I, Cathy Reese, Township Clerk of the Township of Warren, in the County of Somerset, New Jersey, do hereby certify the foregoing to be a true and correct copy of a resolution adopted at a meeting of the Township Committee held on January 26, 2023.

Cathy Reese, RMC
Township Clerk