

June 12, 2007

**RESOLUTION NO. 2007-39**

**RESOLUTION BY THE FINANCE AND HUMAN RESOURCES COMMITTEE  
AUTHORIZING A THREE YEAR CONTRACT WITH WISCONSIN STATE PAYPHONES,  
INC. FOR PAY PHONES IN VARIOUS COUNTY LOCATIONS**

To the Honorable Members of the Racine County Board of Supervisors:

**BE IT RESOLVED** by the Racine County Board of Supervisors that a three year agreement with State Payphones, Inc. as set forth in Exhibit "A" that is attached hereto and incorporated herein is authorized and approved.

**BE IT FURTHER RESOLVED** by the Racine County Board of Supervisors that any two of the County Executive, the County Clerk and/or the County Board Chairman are authorized to execute any contracts, agreements or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

1st Reading \_\_\_\_\_

**FINANCE AND HUMAN RESOURCES  
COMMITTEE**

2nd Reading \_\_\_\_\_

BOARD ACTION

\_\_\_\_\_  
Peter L. Hansen, Chairman

Adopted \_\_\_\_\_

For \_\_\_\_\_

Against \_\_\_\_\_

Absent \_\_\_\_\_

\_\_\_\_\_  
Karen A. Nelson, Vice-Chairman

VOTE REQUIRED: Majority

\_\_\_\_\_  
Thomas Pringle, Secretary

Prepared by:  
Corporation Counsel

\_\_\_\_\_  
David J. Hazen

\_\_\_\_\_  
Q. A. Shakoor, II

\_\_\_\_\_  
Van H. Wanggaard

\_\_\_\_\_  
Pamela Zenner-Richards

**INFORMATION ONLY**

**WHEREAS**, there is a need to approve a three year agreement with Wisconsin State Payphones, Inc. to provide pay phones in various County locations.

LETTER OF AGENCY

This is to advise you that Racine County hereby grants to Wisconsin State Payphones, Inc. authority to act as its agent in coordinating telecommunications service changes regarding its payphones. This grant of authority includes administration information necessary to install, remove, add, or rearrange services as contemplated by the agreement between Racine County and WSP.

This authorization supersedes any previous Letter of Agency or Authorization Letters that may exist and shall remain in effect until cancelled by us in writing.

_____	<u>RACINE COUNTY</u>
AUTHORIZED SIGNATURE	LOCATION NAME
_____	<u>730 WISCONSIN AVE</u>
PRINTED NAME	LOCATION ADDRESS
_____	<u>RACINE, WISCONSIN 53403</u>
TITLE	LOCATION ADDRESS
_____	_____
DATE	CONTACT TELEPHONE #

TELEPHONE NUMBERS AFFECTED BY THIS L.O.A

- 262-634-9790 service is currently through AT&T
- 262-634-9493 service is currently through AT&T
- 262-637-5414 service is currently through AT&T
- 262-634-9914 service is currently through AT&T
- 262-886-9637 service is currently through AT&T
- 262-554-9981 service is currently through AT&T
- 262-835-1251 service is currently through Pacific Telemanagement Services (PTS)

Date \_\_\_\_\_  
 Certified to be correct as to facts  
 By \_\_\_\_\_  
 Racine County Corporation Counsel

## PAY TELEPHONE LEASE AGREEMENT PUBLIC PAY TELEPHONE

- I. A. Racine County hereinafter referred to as "Lessor".  
B. Wisconsin State Payphones, Inc., 12525 West Custer, Butler, Wi 53007 hereinafter referred to as "Lessee".
- II. A. Lessee is a Wisconsin corporation and is a private pay telephone provider/operator, and desires to lease space from Lessor for purposes of installing and maintaining exclusive pay telephone service to Lessor's premises.  
B. Lessor is a Wisconsin (corporation/limited liability company/partnership/sole proprietorship) and desires to lease to the Lessee its premises to allow Lessee to install, operate and maintain exclusive private pay telephone service on Lessor's premises.  
C. The parties wish to enter into an agreement for Lessee to install, operate and maintain a public pay telephone service on Lessor's premises on an exclusive basis. It is the parties' intent that Lessee shall provide said public pay telephone service to Lessor's premises while sharing part of the gross (after cost) revenue with Lessor.
- III. A. Recitals. The recitals to this Agreement are incorporated herein by reference.  
B. Usage and Equipment. Lessor hereby gives Lessee the exclusive right to install, operate, maintain and service all pay telephones (hereinafter referred to in the singular as "pay telephone"), all equipment, including but not limited to, the pay telephone, the pedestal, the enclosure, all fixtures, and/or advertising materials (hereinafter "equipment") on the premises. The location of the pay telephone and all equipment on the premises shall be determined by mutual agreement between Lessee and Lessor on or before the date of installation, except that Lessee shall have exclusive right to place any and all advertising on or near the pay telephone equipment. Lessee shall have the right to make all replacements, updates, modifications and connections which are reasonably necessary or desirable for the proper installation and operation of the pay telephone and equipment. Lessor agrees that during the term of this Agreement or any renewal hereof, it will not enter into an agreement with another company for the installation or operation of any coin and/or credit card operated pay telephones on the premises. In the event the premises is a shopping center or other location with multiple tenants and the Lessor has control over the common areas of said premises, the parties hereby agree that Lessee shall have exclusive right to provide pay telephone service in such common areas.  
C. Terms, Renewal and Expiration. The term of this Agreement shall begin on the date which it is signed (the "commencement date"), and shall terminate on the date which is thirty-six (36) months after the commencement date (the "expiration date"), unless the Agreement is terminated sooner as provided in this Agreement. This Agreement shall automatically renew for an additional three (3) - 36 month periods commencing on the expiration date, unless Lessor delivers written notice to Lessee of Lessor's objection to the automatic renewal no more than ninety (90) days and no less than sixty (60) days prior to the expiration date. If at any time during the term of the agreement, including renewal periods, Lessee, at its own discretion, determines that continuation of pay telephone service at any location covered by this Agreement is no longer economically feasible, Lessee shall have the right to terminate this lease by giving thirty (30) days prior notice.  
D. Compensation/Revenue Sharing. As compensation hereunder, Lessor shall share in the gross line/call revenue generated by said pay telephones during the term of this Agreement according to the following schedule:
- | <u>Gross Line/Call Revenue</u> | <u>Percent of Monthly Gross Line/Call Revenue</u> |
|--------------------------------|---|
| \$0.00 - and up                | 30%   |
- Gross line/call revenue is defined as after cost (line charges, equipment costs and repairs, depreciation, etc.) revenue derived from coin deposits, intralata calls (0+ and collect) and interlata calls (0+ and collect). Lessor shall not have any other claim for compensation/revenue sharing other than as described in this paragraph. Payments made from Lessee to Lessor shall be paid on a three (3) month basis (payment period). Lessee shall promptly remit such monthly share payments to Lessor no later than thirty (30) days from the last day of the payment period in which Lessee has collected the gross line/call revenues set forth herein. In the event that Lessee fails to timely remit such share payments to Lessor, Lessor shall give written notice of such failure to Lessee at Lessee's address no later than ten (10) days after the last day Lessee's share payment remittance is due. Failure of Lessor to give such written notice shall constitute a waiver by Lessor of its right, interest and claim that said share payment is in arrears. Upon receipt of Lessor's written notice of Lessee's failure to timely remit, should Lessee fail to remedy its arrearage within ten (10) days thereafter, Lessee shall be considered in default of this Agreement. Default by Lessee shall be corrected by payment of amount due. All notices referred to in this Agreement must be made by certified or registered mail, return receipt requested.  
E. Maintenance and Repairs. Lessee agrees to provide the premises with semi-public pay telephone service during the term of this Agreement and to promptly service, repair and maintain the pay telephone and equipment as may be required for its proper operation; provided, however, that Lessee shall have no liability for the interruption of pay telephone service for any reason and that Lessee makes no warranties, express or implied, with respect to the pay telephone, the equipment or their respective operation. In the event that Lessee shall default in the performance of its obligations to promptly service, repair and maintain the pay telephone and equipment installed pursuant to this Agreement, Lessor shall promptly notify Lessee in writing of the default.  
F. Phone Lines. Lessee shall have no liability for the interruption of pay telephone service for any reason and makes no warranty, expressed or implied, with respect to the pay telephone, equipment or the respective pay telephone operation. In no event will Lessee bear any liability; nor may this Agreement be terminated for any interruption of service for whatever reason.  
G. Access. Lessor agrees to provide unlimited public access to the pay telephone during regular business hours. Lessor hereby grants Lessee and its service representatives, agents and employees access to the premises for any purpose, including to

install, collect coin, service repair and maintain the pay telephone and equipment; to furnish electricity to the pay telephone and equipment for proper lighting as requested by Lessor; to promptly notify of the need for service and repair of the pay telephone and equipment; to use reasonable efforts to prevent damage to, or destruction of, the pay telephone and equipment; and to take precaution which prevents or adversely affects the use or maintenance of the pay telephone or equipment. Lessor further agrees that Lessee shall have the exclusive right to open, adjust, remove, disconnect, service, repair, maintain, replace or alter the pay telephone and equipment. Lessor shall pay the full cost of repair or replacement of any pay telephone or equipment removed by it, its employees or agents if not done based upon the expressed written authority from Lessee.

H. Authority. Lessor or its agent represents and warrants that Lessor is the owner of the premises or that the signatory is an agent authorized to sign on behalf of the owner, and that the signatory is authorized and empowered to enter into this Agreement on behalf of Lessor. Lessor or its agent further represents and warrants that said business is duly and properly licensed by all required authorities.

I. Installation. Lessee shall be responsible for, and pay all costs in connection with, the installation of the pay telephone and equipment, including all line charges and deposits. Pending regulatory approval and other developments, no representations as to installation date may be made by Lessee. In no event shall Lessee have any liability, nor may this Agreement be terminated, for any delay in installation. Lessor grants to Lessee permission to contact any local exchange or other telephone company to arrange for the installation of any necessary telephone lines and to replace existing equipment. Lessor shall sign a letter of agency or other similar document which provides Lessee authority to fully implement the installation of any necessary pay telephone lines and equipment.

J. Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, Lessor and Lessee and each party's respective successors and assigns, at no cost to either party. Should the Lessor cease doing business at the location address, or if Lessor sells or transfers the premises and/or the assets of the business where the pay telephone is located, Lessor shall notify Lessee at least thirty (30) days before final closing of the premises or business. This Agreement constitutes an interest in real property and as such runs with the land. Lessor shall notify the purchaser or transferee of its obligation to be bound by this Agreement.

K. Compliance. Lessee shall comply with all county terms and conditions as stated/defined in Exhibit A.

L. Remedies. In the event any clause or condition of this Agreement shall be declared unenforceable or void, then, in that event, said clause or condition shall not impair the legality or enforceability of the remainder of this Agreement. In the event that any litigation results out of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party, and the non-prevailing party shall immediately pay upon demand, all reasonable fees and expenses of counsel, as well as the court costs.

M. Interpretation, Modification and Venue. This Agreement shall become valid only when executed and accepted by both parties. This Agreement contains the entire agreement between the parties relating to the subject matter herein discussed, and no change or modification of any of its terms or provisions shall be effective unless made in writing and signed by both parties. This Agreement supersedes all previous agreements made between the parties, whether said agreements were in writing or made orally. The parties agree that this Agreement shall be deemed made and entered into in the state for which the pay telephone will be located and shall be governed and construed under and in accordance with the laws of that particular state. The parties further agree that venue for any such disputes will be proper in the county of Lessee's residence or the county of the location of the disputed pay telephone, all at the discretion and option of Lessee.

N. Insurance Coverage. Lessor shall obtain and maintain all-risks coverage on the building in which the premises is located in an amount equal to full replacement cost. Lessee shall obtain and maintain throughout the term of the lease, all-risks coverage on all equipment, fixtures and other personal property owned by lessee and located on the premises. Lessee also agrees to evidence and maintain proof of reasonable financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Worker's Compensation laws and/or vicarious liability arising from employees. Such evidence shall include insurance coverage from Worker's Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile liability in the following minimum amounts:

Wisconsin Worker's Compensation or Proof of All States Statutory  
Coverage Employer's Liability, \$100,000/\$500,000/\$100,000.

Comprehensive General Liability Bodily Injury & Property Damage \$1,000,000 Per Occurrence (Including Personal Injury, Fire Legal, Contractual & Products/ Completed Operations), \$2,000,000 General Aggregate.

Automobile Liability (for Company owned automobiles if applicable) Bodily Injury & Property Damage \$1,000,000 per accident. All autos owned, non-owned and or hired Uninsured Motorist Per Wisconsin Requirements.

Lessor shall be named as additional insured, as its interests may appear, general liability and automobile liability and be afforded a thirty (30) day written notice of cancellation or non-renewal. A certificate indicating the above coverages shall be submitted for review and approval of Lessor for the duration of this Lease Agreement. Coverage shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver

from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Lease Agreement and such approval shall not be unreasonably withheld.

O. Indemnity. The parties to this Lease Agreement agree to indemnify, defend and hold harmless the other party and their officers and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney's fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional or, negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representatives of the indemnifying party which may result in any person suffering personal injury, death or property loss or damage while on the Premises. Racine County's liability shall be limited by Wisconsin State Statutes §§345.03(3) for automobile and §§893.80(3) for general liability.

IN WITNESS WHEREOF, the parties have duly signed and executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**LESSOR**

**LESSEE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_  
Certified to be correct as to form  
By \_\_\_\_\_  
Racine County Corporation Counsel