



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Ianello, Treasurer

Cc: Terrence D. McCracken, Secretary to the Authority
Joyce A. Tomaka, Chief Financial Officer
Charles E. Eaton, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Mark S. Carney, General Counsel

Date: May 22, 2024

Subject: Lease Extension with Bell Atlantic Mobile Systems, LLC.
(Verizon Wireless) Lease at Wehrle Tank

BACKGROUND

Verizon Wireless has been a tenant at the Wehrle Tank since March 9, 2004, the current lease expired March 9, 2024. Both ECWA's exclusive agent, Francis Clerkin, as well as the Legal Department have been in negotiations with Verizon for nearly eighteen (18) months in an attempt to reach a lease for five years with two extension periods.

The negotiations broke down over a number of issues, including but not limited to;

1. Verizon is unwilling to pay the current rate as calculated by our agent.
2. Verizon being unwilling to provide any form of security deposit or performance bond for the removal of their equipment.
3. Verizon pushing back on providing appropriate subcontractor insurance information or being liable for same.

CURRENT STATUS

On or about April 15, 2024, Verizon advised that they were going to relocate their equipment to a new tower to be provided on land owned by the Town of Amherst and were now simply requesting an extension of the existing lease until the new tower is completed.

Based upon the advice of ECWA's agent, the extension request was denied and Verizon sought outside counsel to negotiate a possible extension. General Counsel entered into discussions with Verizon's counsel to extend their current lease commencing April 1 through December 31, 2024 at an increased rent of \$ 6,000.00 per month. (current rent is \$4033.00 per month) Should Verizon wish to extend this lease beyond January 1, 2025 it will be for a duration of time and rental amount to be mutually agreed upon by ECWA and Verizon.



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

Re: Lease Extension with Bell Atlantic Mobile
(Verizon Wireless & Wehrle tank)
May 22, 2023

The lease extension will have a penalty clause of \$500.00 per day rental cost for everyday Verizon has not removed their equipment from the tower, commencing 1/1/2025 unless an extension has been approved.

RECOMMENDATION

It is the opinion of General Counsel that this Lease Extension is in the best interest of the Erie County Water Authority to continue a revenue source as well as to provide additional protection for the Authority to ensure Verizon safely and properly removes equipment from our tower.

MSC:mes

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Lease Extension Agreement with Bell Atlantic Mobile Systems, LLC
(Verizon) on Wehrle Tank

Item Description:




<input type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input checked="" type="checkbox"/> Other <u>Amendment to Lease-Extension</u>			

Action Requested:


<input checked="" type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input checked="" type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>5/23/2024</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>5/24/2024</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>05/23/2024</u>
<input checked="" type="checkbox"/> Legal		Date: <u>5/23/2024</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>5/24/2024</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____

FIRST AMENDMENT TO LEASE

This **FIRST AMENDMENT TO LEASE** (this "*Amendment*") is made by and between **ERIE COUNTY WATER AUTHORITY**, with its principal offices located at 295 Main Street, Room 350, Buffalo, New York 14203-2494 ("*Landlord*") and **BELL ATLANTIC MOBILE SYSTEMS LLC**, d/b/a Verizon Wireless, successor in interest to Upstate Cellular Network, with a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("*Tenant*").

RECITALS:

WHEREAS, Landlord and Tenant's predecessor in interest entered into a Lease dated as of March 9, 2004 (the "*Lease*") pursuant to which Tenant lease space on Landlord's water tank and land space on Landlord's property located at 450 Wehrle Drive, Town of Amherst, Erie County, New York, Tax Map No. 80.15-1-50.1, as more particularly described in the Lease;

WHEREAS, the term of the Lease expired on April 6, 2024;

WHEREAS, Tenant has entered into a lease agreement with the Town of Amherst to relocate its communications facility to a new site at Kingsgate Park near 400 Wehrle Drive in the Town of Amherst ("*Relocated Facility*") but needs additional time in order to complete the permitting and construction of the Relocated Facility;

WHEREAS, Landlord and Tenant desire to reinstate the Lease and amend it to extend the term and modify certain terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby amend the Lease as follows:

1. All capitalized terms not defined herein shall have the same meanings given to them in the Lease.
2. The term of the Lease is hereby extended from April 7, 2024 through December 31, 2024 ("*Additional Renewal Term*"). The parties acknowledge and agree that it is their intent to reinstate the Lease effective as of April 1, 2024, as if it had not expired.
3. Rent during the Additional Renewal Term shall be at a monthly rent of Six Thousand and No/100 Dollars (\$6,000.00) ("*Additional Renewal Term Rent*").
4. In the event that Tenant has not removed Tenant's Installations and surrendered possession on or before the expiration of the Additional Renewal Term, then rent shall increase to Five Hundred and No/100 Dollars (\$500.00) per day ("*Holdover Rent*") for each day that Tenant

holds over starting on January 1, 2025. Notwithstanding the foregoing, in the event that there is litigation regarding the approvals for Tenant's Relocated Facility, then upon sixty (60) days' notice by Tenant to Landlord, the Additional Renewal Term may be extended by mutual agreement of the parties at a mutually agreed upon monthly rate, and said extension shall expire December 31, 2025.

5. Tenant's address for notices under Section 20.1 of the Lease is hereby revised to:

Bell Atlantic Mobile Systems LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

With a copy to:
Basking Ridge Mail Hub
Attn: Legal Intake
One Verizon Way
Basking Ridge, NJ 07920

6. This Amendment shall be effective as of the date of execution by both parties ("**Effective Date**").

7. Except as modified by this Amendment, all of the terms and conditions of the Lease remain unchanged and in full force and effect.

8. This Amendment is binding on and inures to the benefit of the parties herein and their successors and assigns.

9. Landlord represents and warrants to Tenant that Landlord is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Amendment.

[The remainder of this page is intentionally blank.]

SITE NAME: Amherst Water Tank
MDG Location Id: 5000267420
ATTY/DATE: NP April 2024

IN WITNESS WHEREOF, the parties have executed this Amendment on the dates below.

LESSOR:

ERIE COUNTY WATER AUTHORITY

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

LESSEE:

BELL ATLANTIC MOBILE SYSTEMS LLC
d/b/a Verizon Wireless

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