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TOWN OF WEST SENECA

TOWN SUPERVISOR  
SHEILA M. MEEGAN  
TOWN COUNCIL  
EUGENE P. HART  
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.  
Town Attorney

Date: August 9, 2018

Re: Verizon Wireless – Amendment to Lease Agreement  
East & West Road Water Tank

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Kindly adopt a resolution authorizing the Supervisor to execute the attached Amendment to the Lease Agreement with Verizon Wireless for wireless communications infrastructure space on the East & West Road Water Tank, together with access and utility easements

This Agreement amends the prior lease agreement with a five-year extension at an annual rent of \$18,000.00 and thereafter four option terms to extend for additional 5 year terms with annual rent increasing 112% of the rate of annual rent at the end of the immediately preceding term.

[West Seneca WT]

**AMENDMENT NO. 1 TO OPTION AND LEASE AGREEMENT**

**THIS AMENDMENT NO. 1 TO OPTION AND LEASE AGREEMENT** (“**Amendment**”) dated \_\_\_\_\_, 2018 (the “**Effective Date**”) is by and between the **TOWN OF WEST SENECA**, with offices at 1250 Union Road, West Seneca, New York 14224 (“**LESSOR**”) and **BELL ATLANTIC MOBILE SYSTEMS OF ALLENTOWN, INC.** d/b/a Verizon Wireless f/k/a Upstate Cellular Network, a New York General Partnership, with offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (“**LESSEE**”).

**RECITALS:**

**WHEREAS**, LESSOR and LESSEE entered into an Option and Lease Agreement dated July 20, 1994 (the “**Lease**”) wherein LESSEE leased from LESSOR a portion of LESSOR’s property, including space on LESSOR’s water tank, located at East and West Road being a part of tax parcel number 144.00-01-56.2, in the Town of West Seneca, County of Erie, State of New York, together with access and utility easements; and

**WHEREAS**, the Lease commenced on August 1, 1994 and, LESSEE having exercised all three extension options provided in the Lease, the Lease expired on July 31, 2014; and

**WHEREAS**, despite the expiration date, the parties continued to operate pursuant to the Lease, and LESSEE has been paying monthly rent; and

**WHEREAS**, LESSOR and LESSEE now desire to amend the Lease to, among other things, extend the term on the terms and conditions set forth herein.

Capitalized terms used and not otherwise defined herein shall have the same meanings as in the Lease.

**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, LESSOR and LESSEE agree that the Lease is hereby amended as follows:

1. **Term**. The parties agree that the term of the Lease shall be considered extended as of August 1, 2014, for one 5 year term, and thereafter LESSEE shall have four options to extend for additional 5 year terms on three months advance written notice (each of the five 5-year terms described in this paragraph referred to herein as an "Additional Renewal Term").

2. **Rent**. Effective as of August 1, 2014, annual rent under the Lease increased to \$18,000.00, payable on an annual basis. Within 90 days of the Effective Date, for each lease year listed below, LESSEE shall pay LESSOR annual rent of \$18,000.00 *less the monthly rent LESSEE previously paid to LESSOR during that respective lease year:*

- August 1, 2014 to July 31, 2015

- August 1, 2015 to July 31, 2016
- August 1, 2016 to July 31, 2017
- August 1, 2017 to July 31, 2018

As of August 1, 2018, LESSEE shall pay LESSOR annual rent of \$18,000.0 for the lease year August 1, 2018 to July 31, 2019.

Thereafter, at the commencement of the next Additional Renewal Term and at the commencement of each Additional Renewal Term thereafter for the remainder of the term of the Lease, annual rent shall be 112% of the rate of annual rent at the end of the immediately preceding Additional Renewal Term.

3. Notices. Section 21 of the Lease regarding notice is hereby replaced and superseded with the following:

21. All notices permitted or required to be given by the terms of the Lease shall be in writing and shall be deemed sufficiently given if hand delivered, sent by certified mail, return receipt requested, or sent by nationally recognized overnight courier service (such as Federal Express or Airborne Express) addressed as follows:

If to LESSOR:

Town of West Seneca  
1250 Union Road  
West Seneca, New York 14224  
Attn: Town Attorney

With copy to:

Erie County Water Authority  
295 Main Street, Rm 350  
Buffalo, NY 14203-2415  
Attn: Water Authority Counsel

If to LESSEE:

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

Notices given pursuant to this section shall be deemed to have been received (a) if personally delivered, upon delivery; (b) if sent by certified mail, three (3) days after the notice was mailed; or, (c) if sent by nationally recognized overnight courier service, one day after sending. Either party

may, by written notice given in accordance with this section, designate a different address or addresses to which such notices shall be sent. Notices given pursuant to this section which are given by the attorney for either party shall have the same force and effect as notices given by the party on whose behalf the notice is given.

4. Except as specifically modified by this Amendment, all of the terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between any term and provision of the Lease and this Amendment, the terms and provisions of this Amendment shall control.

5. This Amendment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

6. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Amendment.

**IN WITNESS WHEREOF**, the parties have executed this Amendment on the dates below, effective as of the date first above written.

**LESSOR:**

**TOWN OF WEST SENECA**

By: \_\_\_\_\_

Printed Name:

Title:

Signature Date: \_\_\_\_\_

**LESSEE:**

**BELL ATLANTIC MOBILE SYSTEMS OF  
ALLENTOWN, INC. d/b/a Verizon Wireless**

By: \_\_\_\_\_  
Printed Name: Richard Polatas  
Title: Director Network Field Engineering  
Signature Date: \_\_\_\_\_

Consented to by:

**ERIE COUNTY WATER AUTHORITY**

By: \_\_\_\_\_

Printed Name:

Title:

Signature Date: \_\_\_\_\_