



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
Jessica R. Brown, Comptroller
Charles E. Eaton, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Mark S. Carney, General Counsel

Date: August 7, 2025

Subject: Lease with New Cingular Wireless PCS, LLC (formerly AT&T
Mobility) at 225 Frederick Road Tank

BACKGROUND

New Cingular Wireless PCS, LLC (formerly AT&T Mobility) has been a tenant at the 225 Frederick Road, Tonawanda, Water Tank since November 9, 2004. The current lease expired November 8, 2024. The Legal Department has been in negotiations with New Cingular Wireless PCS, LLC for ten (10) months in an attempt to reach a lease for five years with two five-year extension periods.

As a result of these negotiations, the Legal Department negotiated an annual rate of \$60,000 for each year of the lease. This is an increase from the \$46,875 paid for the last year of the expired lease. An increase of 15% rent paid will accompany each five-year extension.

In addition, we negotiated tighter controls on access to our facilities to help maintain a safe and secure environment.

RECOMMENDATION

It is the opinion of General Counsel that this new Lease 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 and its facilities.

MSC:mes

**ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Board Meeting Documents**

Document Name: _____ **Project No.:** _____

Description: _____

Item Description:

Choose one:

Other: _____




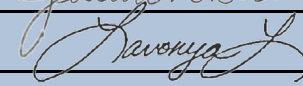



Action Requested:

Choose one:

Other: _____

Approvals Required:

APPROVED AS TO CONTENT:

Chief Financial Officer		Date: 08/07/2025
Chief Operating Officer		Date: 08/11/2025
Claims Rep. – Risk Manager		Date: 8/7/2025
Comptroller		Date: 8/7/2025
Director of Administration		Date: 08/07/2025
Director of Distribution	_____	Date: _____
Director of Human Resources	_____	Date: _____
Director of IT	_____	Date: _____
Director of Production	_____	Date: _____
Director of Water Quality	_____	Date: _____
Executive Engineer		Date: 8/11/2025
General Counsel (Legal)		Date: 08-07-2025
Other: _____	_____	Date: _____

APPROVED FOR BOARD RESOLUTION:

Secretary to the Authority		Date: 08/11/2025
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Remarks: _____

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

SITE LEASE AGREEMENT

This SITE LEASE AGREEMENT (this "**Agreement**" or "**Lease**") is effective the date of the last signature on this Agreement (the "**Effective Date**") by and between ERIE COUNTY WATER AUTHORITY, a public benefit corporation, having its principal place of business at the address of 295 Main Street, Room 350, Buffalo, New York 14203, ("**ECWA**" or "**Authority**") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, with an address of 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, Georgia 30319 ("**Tenant**").

ECWA and Tenant agree to the following:

1. **Property Description** ECWA is the owner of the real property located on a parcel of land with a street address of 225 FREDERICK RD., TONAWANDA, NEW YORK and on a legal description as further described on **Exhibit A** (the "**Property**"). The Property includes the location of a water tower owned by ECWA ("Tower") which Tenant seeks to have access to located on a portion of the Property which is comprised of approximately two hundred (200) square feet plus any additional portions of the Property which Tenant may require for the use and operation of its facilities as generally described on **Exhibit B** (the "**Premises**").
2. **ECWA Cooperation** Subject to the Rules and Policy Manual, which is applicable to all tenants of the Property in a non-discriminatory manner, ECWA shall cooperate with Tenant's due diligence activities, which shall include, but not be limited to, access to the Property for inspections, testing, and permitting related to the Permitted Uses (as defined below). ECWA authorizes Tenant to file, submit and obtain all zoning, and direct land use and other applications for permits, licenses and approvals required for the Permitted Uses from all applicable governmental and quasi-governmental entities (collectively, the "**Governmental Approvals**"). ECWA's cooperation shall include the prompt execution and delivery of any documents necessary to obtain and maintain Government Approvals or utility services. Additionally, ECWA shall not take any actions which are in conflict with or interfere with Tenant's Government Approvals. Upon execution of this Agreement, if applicable, Tenant immediately shall apply for any required Government Approvals and diligently pursue same. Tenant shall be solely responsible for all application and operational permit fees without cost or contribution from ECWA.
3. **Antenna Facilities and Permitted Uses** Tenant leases the Premises for its equipment, personal property and improvements associated with Tenant's wireless communications business. The Premises may be used for the construction, installation, operation, maintenance, and repair, of the Antenna Facilities in accordance with the plans and specification details that are submitted to ECWA in advance and subject to prior written approval by ECWA before any installation shall occur. TENANT shall have the right, at its sole cost and expense, to install, operate and maintain the facilities on the leased portions of the Tower described in Exhibit "B" attached hereto, which facilities include radio transmitting and receiving antennas (the "**Antenna Facilities**"). The Tenant's installation of all such equipment, personal property, and facilities shall be done according to plans approved by ECWA, and no equipment or property shall be subsequently relocated without ECWA's approval, which approvals shall not be unreasonably withheld, conditioned or delayed. ECWA acknowledges that Tenant previously installed the Antenna Facilities pursuant to the Prior Lease (defined below) and ECWA hereby approves the plans attached hereto as Exhibit B. TENANT shall provide ECWA with "as built drawings of the equipment installed on the water tower and improvements installed on the Premises which show the actual location on the water tower and improvements installed on the Premises which show the actual location of all equipment and improvements". Such drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities actually placed on the Tower. A site plan will be provided showing the proposed placement of any shelter. All costs for required review and approval of any structural studies will be paid by the Tenant within 30 days of receipt of a detailed invoice.
4. **Termination of Prior Agreement** ECWA and Tenant acknowledge and agree that space at the Premises was previously leased by Tenant from ECWA under the terms and conditions of that certain Lease Agreement dated November 2024, as may have been amended (collectively, the "**Prior Lease**"). ECWA and Tenant acknowledge and agree that the Prior Lease is terminated effective as the day immediately preceding the Commencement Date (defined below) of this Lease, and that, thereafter the terms and conditions of this Lease shall be the sole instrument governing the leasing of space by Tenant at the Property.

5. Lease Term

- a. The Initial Term of this Agreement shall be five (5) years and will be guaranteed subject to the rights under paragraph 14 commencing on 11/09/2024 (the "Commencement Date") and ending at 11:59 p.m. on the day immediately preceding the fifth (5th) anniversary of the Commencement Date (the "Initial Term").
- b. Provided Tenant has fully performed all obligations and is in good standing under this Lease, and provided further that Landlord has not given a notice at least 195 but no more than 210 days prior to expiration, requiring the Lease to expire as scheduled at the end of the Initial Term, the Initial Term shall renew for two (2), five (5) year extensions ("Renewal Term"), provided, however, that Tenant may elect not to renew by providing written notice one hundred eighty (180) days prior to the expiration of the then current Term. The Initial Term, together with any Renewal Terms, are referred to collectively as the "Term".
- c. If Tenant remains in possession beyond the Restoration Period (defined below) permitted in Section 14.4 after expiration of the Term of this Lease, including any Renewal Term, and ECWA and Tenant are not then in good faith negotiations to extend the Term of the Lease, then, upon twenty (20) business days prior written notice to Tenant, ECWA may access the Performance Bond pursuant to Section 6 below and remove and store Tenant's remaining Antenna Facilities and other physical equipment or installations situate on the Premises or anywhere else on the Property at Tenant's sole cost and expense. In addition to the foregoing, for so long as it takes ECWA to complete the removal of all of the Tenant's Antenna Facilities and other related equipment as aforesaid, the Tenant shall remain liable for monthly rent payable by Tenant for the holdover period equal to one hundred fifty percent (150%) of the prorated Base Rent and Additional Rent due for the period immediately preceding the holdover. The payment of said holdover rent and ECWA's acceptance and retention of the same shall not be deemed or construed as ECWA granting any new or additional term authorizing Tenant to remain on the premises beyond the required expiration and facilities removal date(s) set forth herein, and all other terms and conditions of this Lease shall remain in full force and effect, except the effective date of any termination, that Tenant shall discontinue all power and usage of its Antenna Facilities.

6. Rent/Other Charges: Performance Bond

- a. Upon the Commencement Date, Tenant shall pay ECWA rent in the amount of \$60,000 for the first year (the "Rent" or "Base Rent"). The Tenant shall deliver Rent to ECWA at the address specified in Section 18, or by electronic payment. Subsequent Rent shall be payable on each anniversary date of the Commencement Date of this Agreement. Notwithstanding the foregoing, Rent for the first year will be due and owing within thirty (30) days following the full execution of this Lease. Any Rent paid beyond 30 days shall be subject to 2% late charge.
- b. The Rent shall be 15% above the rent paid under the previous lease with each five (5) year extension.
- c. Rent for any partial year shall be prorated on a per day basis, based on the number of days in the month in question. ECWA shall cooperate with Tenant regarding the use of any electronic rent payment systems or the provision of any associated documentation.
- d. Any charges payable under this Agreement other than Rent shall be billed by ECWA to the Tenant; any charges not billed within six (6) years shall be waived by ECWA and not payable by Tenant. ECWA shall submit bills to Tenant's notice address in accordance with the notice provisions of this agreement.
- e. Within thirty (30) days after full execution of this Lease, the Tenant shall procure on ECWA's behalf, and maintain throughout the Term, a performance bond ("Performance Bond") issued by a reputable company in the amount of \$50,000 for the sole purpose of assuring Tenant's faithful performance of the terms and conditions of this Agreement. If Tenant defaults under

this Agreement, which default is not cured by Tenant within the applicable cure period, ECWA may use this Performance Bond to reimburse the ECWA for losses, damages or expenses to the extent incurred or suffered by ECWA by reason of Tenant's uncured default. Prior to ECWA accessing the Performance Bond, it shall first give Tenant written notice of its intention to do so and with that notice shall provide Tenant with written documentation reasonably acceptable to Tenant of the loss, damage, or expense for which ECWA seeks compensation from the Performance Bond. Such notice and documentation shall be provided by ECWA to Tenant within thirty (30) days after the date of the occurrence which gives rise to ECWA's claimed loss, damage, or expense. Failure to provide such notice and documentation within such time shall result in a waiver by ECWA of the right to access the Performance Bond. If the Performance Bond is accessed by ECWA in accordance with this paragraph, the Tenant shall restore the Performance Bond within thirty (30) days after the notice and demand from ECWA.

7. **Interference** Tenant shall not interfere with the radio frequency communications of ECWA or any of ECWA's existing tenants as of the Effective Date. After the Effective Date, except as provided herein, ECWA shall not install, or permit any third party to install, any equipment or structures that interfere with or restrict the operations of Tenant. The interfering party shall remove the cause of interference within seventy-two (72) hours of written notice to ECWA or telephonic notice to Tenant at 1-800-638-2822 together with a copy of written notice. In the event such interference is not resolved within such a seventy-two (72) hour period, then the interfering party shall power down the interfering equipment (except for intermittent testing) until such interference is eliminated. Each party shall have the right to exercise all legal and equitable rights and remedies to end the interference. Notwithstanding the above, Tenant acknowledges that the Primary Use of the Property by ECWA is for governmental purposes providing E-911, police, and health and safety services. Upon and after written and telephonic notice (at the number above) is received from ECWA advising Tenant of a material interference with the governmental operations of ECWA in providing E-911, police, and health and safety services, together with supporting documentation evidencing the existence of such interference, Tenant shall immediately address such interference, including powering down the Antenna Facilities, as hereinafter defined, if necessary, except for intermittent testing, until such interference is eliminated.
8. **Water Tower Purpose** Tenant recognizes that the Primary Function of the elevated water tank is to provide water storage for ECWA and its customers. Tenant understands that ECWA may find it necessary from time to time to interrupt Tenant's use of the Premises for maintenance, including but not limited to painting of the water tank. ECWA shall give Tenant at least one hundred eighty (180) written notice of its intention to do any maintenance work on the tank, unless a shorter notice period is necessitated by emergency conditions as solely determined by ECWA. ECWA shall provide Tenant with the estimated time needed by ECWA to perform its planned work which is the "Maintenance Period". The Tenant at its sole cost and expense shall temporarily remove and/or relocate its equipment during the scheduled maintenance, and it shall have all Tenant equipment removed from the tank at least ten (10) days prior to the start of the Maintenance Period. In the event Tenant shall fail to remove or relocate the Antenna Facilities in a timely fashion, the Tenant shall become responsible for any additional cost incurred as a result thereof. Tenant, at its sole cost and expense, may relocate temporarily its equipment or install a temporary communications facility, such as a Cell on Wheels, ("**COW**") on ECWA's Property provided, however, that such relocation shall not exceed the Maintenance Period by more than 45 (45) business days. Tenant shall have temporary access granted to Tenant by ECWA for such purposes to ensure its ability to continue its operations without any interruption whatsoever throughout the course of work required for such maintenance or repairs of water tank. Prior to the placement of such temporary cellular transmission/reception facility the Tenant shall submit plans for ECWA approval of the proposed temporary placement. Such approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything contained in the Lease to the contrary, Tenant shall not be required to obtain prior ECWA approval to replace any damaged or malfunctioning Antenna Facilities with equipment of the same model, or type, and size, or to exchange existing Antenna Facilities with equipment that is of the same size or smaller and the same weight or lighter. Tenants may install, modify, repair, replace and upgrade any ground-based Antenna Facilities in the ground space portion of the Premises at any time without prior ECWA approval so long as such ground-based Equipment is not installed outside the leased ground space portion of the Premises.

9. **Intentionally Omitted**

10. **Utility Services: Signage**

- a. Tenant shall have the right to connect to existing utility related equipment with prior consent of the ECWA, such consent not to be unreasonably withheld, conditioned or delayed, and shall have the right to install new utility related equipment to service its Antenna Facilities, or cell-on-wheels or serving the Property (collectively, the "**Utility Facilities**").
- b. Tenant shall be responsible for all utilities charges for electricity, or any other utility service used by Tenant on the Premises. Tenant may install separate meters for Tenant's utility usage. If Tenant does not install a separate meter, Tenant shall automatically pay ECWA two hundred dollars and zero cents (\$200.00) per month for its utility usage.
- c. Except for signage required by applicable law, Tenant shall not place any signage on the Premises or the Property without the express prior written consent of ECWA which shall be determined and either granted or denied in its sole discretion.

11. **Access**

- a. Subject to all security requirements and protocols set forth herein or in ECWA's Rules and Policy Manual, ECWA agrees to allow Tenant and/ or its subcontractor, InfraServices Group Wireless LLC, access to the Premises during ordinary business hours (8:00 a.m. – 4:00 p.m., Monday through Friday) for regular maintenance and repairs. ECWA shall make every effort to accommodate Tenant for emergency repairs. The Tenant may obtain emergency access by emailing the ECWA Designated Site Representative. The Tenant is subject to the ECWA Cell Tower Access Requirements outlined in Addendum 1.
- b. Prior to access to the Property, Tenant shall provide all the insurance required pursuant to the two Addenda attached hereto and made a part hereof as Addendum 2 and Addendum 3. Tenant shall not be required to resubmit Addendum 2 and Addendum 3 if previously provided within a twelve (12) month period. Tenant shall provide updated certificates required in Addendum 2 and Addendum 3 once the certificates have expired. If access is necessary for emergency repairs by Tenant, insurance information shall be provided as soon as reasonably practicable and shall not constitute a basis to delay access to the Property for emergency repairs.

12. **Annual Inspection** At the ECWA's discretion, following any modification made to the Antenna Facilities by Tenant, the Premises may be inspected by ECWA's engineering staff one (1) time following each such modification. Tenant agrees to reimburse ECWA one thousand five hundred dollars and zero cents (\$1,500.00) for each such review when invoiced by ECWA. ECWA shall provide at least seventy-two (72) business hours prior written notice to the Tenant of such inspection for Tenant to have an opportunity to have a representative present during such inspection.

13. **Upgrade Protocol** Tenant may upgrade or replace the Antenna Facilities from time to time after submitting plans and obtaining the prior written approval of the ECWA, provided that their location on the leased portions of the tower is satisfactory to ECWA, such approval not to be unreasonably withheld, conditioned, or delayed. Tenant shall submit to the ECWA a proposal for any such replacement facilities, and for any supplemental materials as may be reasonably requested for ECWA's evaluation and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The size or number of Antenna Facilities may not be increased as a result of such upgrade or replacement of Antenna Facilities without the prior written approval of the ECWA, which shall not be unreasonably withheld, conditioned or delayed. If the size of the Antenna Facilities is increased, the rent shall be increased proportionate to the increase in the size of the Antenna Facility. All actual and reasonable costs for required review and approval of the structural studies will be paid by the Tenant within thirty (30) days of receipt of a detailed invoice. Tenant and its subcontractors (which Tenant shall be liable for) shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. The Tenant must remove the Antenna Facilities and all other related equipment within ninety (90) days of the expiration of this Lease. In addition to the

foregoing, upon reasonable request, ECWA shall be entitled to receive copies of legally required annual or periodic site inspection reports performed by Tenant on the Antenna Facilities and installed on the Premises during the Term (including Renewal Terms) of this Lease.

14. Termination

14.1 The Tenant has the right to terminate this Agreement at any time, including all Renewals, and removal from the Premises, upon any of the following events:

- a. For any or no reason, with at least six (6) months' written notice to the Authority, conditioned on and subject to Tenant's payment of the remaining Rent owed for the balance of the then current five (5) year Initial Term or Renewal Term.
- b. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Tenant's Antenna Facilities installations cannot be obtained, or is revoked, or if the Tenant determined the cost of obtaining such an approval is prohibitive, upon thirty (30) days' written notice; or
- c. If the Tenant determines that the Premises is not appropriate for locating the wireless communication system for technological reasons, including, but not limited to, signal interference, upon a six month notice to the Authority.

14.2 The Authority has the right to terminate the Agreement upon any of the following events:

- a. If the Authority, based on the conclusion of a New York State licensed professional engineer that under applicable building codes and recognized engineering standards the Tower has become structurally unsound and that the structural capacity of the Tower cannot be reinforced with commercially reasonable modifications, upon one hundred (180) days' notice to the Tenant, except in an emergency related to an imminent threat of harm to persons or damage to property. If the Authority provides notice of termination under this provision, Tenant shall have the option to perform structural modification work to make the Tower compliant with applicable codes and engineering standards.
- b. If the Authority, in its sole discretion, based on sound fiscal principles determines that the Tower should be replaced or torn down as a water storage facility, upon one years' notice to Tenant; or
- c. If the Authority, in its sole discretion, based on sound engineering principles as determined by a New York State licensed professional engineer, determines that Tower has become hazardous or dangerous to persons or property due to an Act of God, upon ninety (90) days' notice to the Tenant except in an emergency related to an imminent threat of harm to persons or damage to property. In the event of such an emergency, the Authority will provide as much advance notice of termination as reasonably possible under the circumstances.

In the event Tenant receives notice of termination pursuant to Section 14.2 (a), (b), or (c), with Landlord's consent, Tenant may install a temporary communications facility and Utility Facilities in a mutually agreeable location on the Property for the remainder of the then-current five (5) year Term. In the event Tenant decides to install the temporary communications facility, then, upon commencement of commercial operation of the temporary communication facility on the Property, such notice of termination shall be deemed withdrawn and null and void, and the Agreement will remain in full force and effect. Thereafter, any reference to the Premises in the Lease shall refer to and mean only the location of the temporary communication facility on the Property.

14.3 **Site Restoration** Except as otherwise stated in this Agreement, the Tenant shall have ninety (90) days from the termination or expiration date to remove the Tenant's Antenna Facilities installations and related equipment from the Premises, repair the site and restore the surface of the Tower (the "**Restoration Period**") to the condition existing prior to such installation, reasonable wear and tear and loss by casualty excepted. During the Restoration Period all Rent and other obligations of the Tenant shall remain in full force and effect and be paid, performed, and satisfied, but such continuing

performance of said obligations shall not constitute any form of renewal of this Lease or grant the Tenant any other rights hereunder. The Tenant's removal of all equipment and restoration of the Premises must be to the reasonable satisfaction of the Authority. If the Tenant's Antenna Facilities installations and related equipment are not removed to the reasonable satisfaction of the Authority, they shall be deemed abandoned and become the property of the Authority and the Tenant shall have no further rights to them. The Tenant shall be responsible for all costs associated with the removal of the Tenant's Antenna Facilities installations and related equipment, repairs to the site and restoration of the surface of the water tower (to the Authority's satisfaction) where they alone are located. If the Tenant fails to remove its Antenna Facilities installation, the Authority will charge, and the Tenant shall be responsible for, the total costs associated with their removal and restoration.

15. **Casualty and Condemnation** If the Premises or Antenna Facilities are damaged or destroyed by wind, fire or other casualty, Tenant shall be entitled to negotiate, compromise, receive and retain all proceeds of Tenant's insurance and other claims. If the Premises, or Antenna Facilities are taken or condemned by power of eminent domain or other governmental taking, then: (a) Tenant shall be entitled to negotiate, compromise, receive and retain all awards attributable to (i) the Antenna Facilities, (ii) Tenant's leasehold interest in the Property, (iii) any moving or relocation benefit available to Tenant and (iv) any other award available to Tenant that is not attributable to ECWA's title to or interest in the Property. If the Antenna Facilities are not operational due to casualty or condemnation, the Tenant shall have the right to abate the Rent for that time period. In addition, Tenant may terminate the lease by thirty (30) days written notice to ECWA.
16. **Default and Right to Cure** In the event there is a breach by the Tenant with respect to any of the provisions of this Agreement or its obligations under it, except for the Tenant's obligations of removal and restoration set forth in Section 13 which are self-executing and require no further notice or demand for performance, the Authority shall give the Tenant written notice of the breach. Upon receipt of notice, the Tenant shall have thirty (30) days in which to cure the breach, unless the nature of the cure will reasonably require a longer time in the sole discretion of the ECWA and the Tenant begins the cure within the thirty (30) day period and diligently pursues the cure to completion within a reasonable period of time. In the event the breach is not cured as set forth above, the Authority at any time thereafter may give written notice to the Tenant specifying such an event of default and stating that this Lease Agreement shall expire and terminate thirty (30) days after giving of such notice if the default is not timely cured. This Agreement shall terminate on the date specified in the notice. In the event there is a breach by the ECWA with respect to any of the provisions of this Agreement or its obligations under it, Tenant shall give ECWA written notice of the breach. Upon receipt of notice, the ECWA shall have thirty (30) days in which to cure the breach, unless the nature of the cure will reasonably require a longer time and the ECWA begins the cure within the thirty (30) day period and diligently pursues the cure to completion within a reasonable period of time. In the event the breach is not cured as set forth above, Tenant at any time thereafter may give written notice to the ECWA specifying such event of default or events of default and stating that this Lease shall expire and terminate thirty (30) days after giving of such notice if such default is not timely cured. This Agreement shall terminate on the date specified in the notice.
17. **Insurance Indemnification & Hold Harmless Agreement: Waiver of Subrogation Rights** As a condition precedent to the ECWA's obligation to execute this Agreement, the Tenant (and Tenant's contractor – InfraServices Group Wireless LLC, and any and all successors) is required to submit to ECWA evidence (consisting of certificates of insurance) showing that the Tenant has obtained all insurance coverage required herein. **ALL THE INSURANCE IS TO BE SUBMITTED BY TENANT AND APPROVED AND CONFIRMED BY ECWA RISK MANAGER AND GENERAL COUNSEL PRIOR TO THIS AGREEMENT BEING BINDING ON ECWA.** Nothing contained herein shall be construed as limiting the extent of the Tenant's liability for claims or damages resulting from or related to the performance by the Tenant of any covenant under terms of this Agreement or from or related to any of the Tenant's activities upon the Property and the Premises. All insurance required herein shall list ECWA as an additional insured on all Liability Insurance policies. The Tenant waives all rights against the ECWA for all losses and damages caused by any of the perils covered by such policies and all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against the ECWA. The Tenant acknowledges that the ECWA has insurable interests under the Tenant's Insurance Policies. The Tenant shall purchase and maintain, at its sole expense and with a company rated A- or better, insurance as set forth in the Attached Insurance Requirements which are attached hereto and incorporated by reference in its entirety (Addendum 2). **The Tenant shall be responsible for obtaining**

all required Insurance Addendums and Certificates from any of their contractors or subcontractors and provide them to the ECWA consistent with the terms and conditions of the Agreement and approved by ECWA's Risk Manager in advance. The sub-contractor Addendum, which is attached hereto and incorporated by reference in its entirety shall be signed between the Tenant, the Tenant's contractors and their sub-contractors. (Addendum 3)

- a. **Periods of Coverage** – All policies of insurance required under this Agreement shall remain in full force and effect until such times as the Initial Term of this Agreement or any Renewal Term comes to an end.
 - b. **Certificates** - Certificates of insurance required above must be filed with the ECWA before this Agreement is signed on behalf of the ECWA and thereafter upon each renewal of each policy of insurance required by this Agreement to be maintained by Tenant. All certificates of insurance must provide for thirty (30) days prior written notice to the ECWA of policy cancellation or material charge.
 - c. **Indemnification and Hold Harmless Agreement** – The Tenant agrees to indemnify and hold harmless the ECWA and its agents and employees from and against all claims, damages, losses and expenses, including reasonable attorney's fees, in case an action or claim is brought or filed which arises out of the use of the Property and/or Premises pursuant to this Agreement which is for bodily injury, illness, or death to any person or for any property damage, including loss of use, that is caused in whole or in part by the Tenant's negligent acts or omissions or that of any person(s) employed by the Tenant or for whose acts the Tenant may be liable except to the extent such claims arise from the negligence or willful misconduct of ECWA, ECWA's agents, employees, contractors, tenants, guests, invitees, or licensees. This indemnification and hold harmless agreement shall apply in all instances whether the ECWA, as well as its agents and employees, is made a direct party to the initial action or claim or subsequently is made a party to the action by a third-party in pleading or is made a party to a collateral action arising, in whole or in part, from any of the issues emanating from the original cause of action or claim. ECWA agrees to indemnify and hold harmless the Tenant and its agents and employees from and against all claims, damages, losses and expenses, including reasonable attorney's fees, in case an action or claim is brought or filed which arises out of the negligent acts or omissions or that of any person(s) employed by the ECWA, except to the extent such claim arises from the negligence or willful misconduct of Tenant, Tenant's agents, employees, or contractors. Neither party shall be liable to the other for any consequential or special damages or loss of profits.
 - d. **Right of Recovery**- The Tenant waives all rights of recovery against the ECWA or ECWA's agents, employees, or other representatives for any loss, damages, or injury of any nature whatsoever to property or persons for which the Tenant is insured.
18. **Notices** All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. ECWA or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, address to:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group – Lease Administration
Re: Cell Site Name: Tonawanda WT (NY)
Fixed Asset #: 10036725
1025 Lenox Park Blvd NE 3rd Floor
Atlanta, Georgia 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site Name: Tonawanda WT (NY)
Fixed Asset #: 10036725
208 S. Akard Street
Dallas, TX 75202-4206

**If to ECWA, address to:
Erie County Water Authority
295 Main Street, Room 320
Buffalo, New York 14203
Attn: Legal Department**

19. **Quiet Enjoyment, Title and Authority** ECWA covenants and warrants that:

- a. ECWA has full right, power, and authority to execute and perform this Agreement and to grant Tenant the leasehold interest and Easements contemplated under this Agreement;
- b. ECWA has good and unencumbered title to the Property, free and clear of any liens or Mortgages (defined below) which shall interfere with the Tenant's Lease or any rights to or use of the Premises;
- c. The execution and performance of this Agreement shall not violate any laws, ordinances, covenants, or the provisions of any Mortgage, lease, or other agreement binding on ECWA;
- d. Tenant's quiet use and enjoyment of the Premises shall not be disturbed.

20. **Environmental Laws** Tenant shall comply with all federal, state, and local laws in connection with any substances brought onto the Property that are identified by any law, ordinance, or regulation as "**Hazardous Substances**". Tenant agrees to be responsible for all losses or damage caused by any Hazardous Substances that it may bring onto the Property or cause the Property to be exposed to by reason of Tenant's use, possession, or operation upon the Premises under this agreement and will indemnify ECWA for all such losses or damages. ECWA agrees to be responsible for all losses or damage caused by any Hazardous Substance on or entering the Property, except those caused or brought onto the Property by Tenant, and will indemnify Tenant for all such losses or damages including the cost of any investigation or remediation, or other actions required to comply with applicable law. ECWA represents that it has no knowledge of any Hazardous Substances on the Property. All testing performed at this site by Tenant shall be provided to ECWA in its entirety.

21. **Assignment**

- a. With written consent of ECWA, Tenant shall have the right to assign, sublease or otherwise transfer this Agreement to the Tenant's principal, affiliated, subsidiaries of its principal or to any entity which acquires all or substantially all of Tenant's assets in the market defined by the FCC in which the Property is located or to any entity which is the successor to Tenant by reason of a merger, acquisition, or other business reorganization upon thirty (30) days' prior written notice to ECWA. The ECWA will not unreasonably withhold, condition or delay consent for assignment to an affiliate. Upon an assignment or transfer set forth above, Tenant shall not be relieved of any liabilities and obligations and Landlord shall look to the Tenant transferee for performance under this Lease. Tenant may not otherwise assign the Lease without the prior written consent of ECWA conditioned upon and within the sole discretion to assess and verify the following:
 - i. The full identification of the proposed Assignee, including but not limited to its organizational formation and status, principal place of business, and consent to and acceptance of the jurisdiction of the State of New York;
 - ii. Full background verification of the proposed Assignee's financial condition and fitness to be a suitable obligor of all the Tenant's duties, obligations, and responsibilities under this Agreement, including being given all financial statements, including audited financial reports and statements prepared for the current year and three (3) years preceding the date of the proposed transaction; and
- b. ECWA shall have the right to assign and transfer this Agreement to a successor owner of the property.

22. **Marking and Lighting Requirements** If any tower or other support structure for Tenant's Antenna Facilities is owned by ECWA, ECWA acknowledges that ECWA shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. ECWA shall indemnify and hold Tenant harmless from any fines or other liabilities caused by ECWA's failure to comply with these requirements by the FAA or FCC.

23. **Miscellaneous**

- a. The prevailing party in any litigation or other legal proceedings arising under this Agreement (including any appeals and any insolvency actions) shall be entitled to reimbursement from the non-prevailing party for reasonable attorneys' fees and expenses.
- b. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations, and other agreements with respect to the subject matter and Property. Any amendments to this Agreement must be in writing and executed by both parties.
- c. This Agreement shall be construed in accordance with the laws of the State of New York, and all legal actions and proceedings, including those seeking equitable relief, shall be venued and jurisdiction for the same shall be expressly vested in the Supreme Court of the State of New York held in and for the County of Erie. No federal removal or other objection to forum selection or choice of law shall be allowed with respect to any action or proceeding conducted to interpret or enforce this Agreement.
- d. If the term of the Agreement is found to be void or invalid, the remaining terms of this Agreement shall continue in full force and effect. Any questions of interpretation shall be interpreted as to their fair meaning.
- e. Each party hereby represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it, and that no consent or approval is required by any lender or other person or entity in connection with the execution or performance of this Agreement.
- f. If either party is represented by any broker or any other leasing agent, such party is responsible for all commission fees or other payment to such agent.
- g. This agreement and the interests granted herein shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.
- h. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Agreement shall legally bind the parties to the same extent as original documents.

[SIGNATURES ON THE FOLLOWING PAGE]

LANDLORD: Erie County Water Authority

By: _____

Printed Name: _____

Title: _____

Date: _____

TENANT: New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

Legal Description

Subject to the terms and conditions of this Agreement, the location of the Legal Description is generally described and depicted as shown below or in the immediately following attachment(s).

DRAFT

OUT CLAIM DUE

THIS INDENTURE made this 3 day of May 1902 between the COUNTY OF ERIE, a municipal corporation organized under the laws of the State of New York, having its main office and principal place of business at 95 Franklin Street, City of Buffalo, County of Erie and State of New York, party of the first part, and the ERIE COUNTY WATER AUTHORITY, 3030 Union Road, Cheektowaga, New York 14227, party of the second part,

WITNESSETH

That the party of the first part, in consideration of One and 00/100 Dollars (\$ 1.00) lawful money of the United States, paid by the party of the second part, does hereby demise, release and quit claim forever unto the party of the second part, its heirs and assigns forever, _____

ALL THAT TRACT OR PARCELS OF LAND situate in the City of Tonawanda, County of Erie and State of New York being part of Parcel 36, Township 12, Range 8, and is further described on Erie County Tax Maps as Section, Block and Lot No. 53,070-9-3 (225 Frederick, 1.10 acres).

Intending to convey all the land acquired by Erie County in a deed filed in the Erie County Clerk's Office on June 2, 1978 under Liber 8653 Page 335.

This conveyance is made and accepted with the reservation of and subject to any and all easements and rights of way heretofore separately acquired by the County as if same had not merged with the fee title conveyed, but not limited to; any portion of the above-described premises conveyed to or dedicated by the County of Erie for highway, drainage or other purposes or may appear the records of the Clerk of the County of Erie, subject also to taxes, local assessments, easements and restrictions or other matters of record affecting the premises.

TOGETHER with the appurtenances and all the estate rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, his or her heirs and assigns forever.

This conveyance is made pursuant to a resolution passed by the Erie County Legislature on the 25th day of April 2002.

1309
117
M. Cox
Vol-3-0
at the property
description

EXHIBIT B

Premises

Subject to the terms and conditions of this Agreement, the location of the Premises is generally described and depicted as shown below or in the immediately following attachment(s).

DRAFT

ADDENDUM 1

ECWA CELL TOWER ACCESS REQUIREMENTS

Any Tenant, Contractor, Vendor, its employees, agents and subcontractors who wish to access any Authority property must comply with the following Requirements:

- 1) A formal written request by the Tenant on company letterhead detailing the scope of work to be performed, including any construction drawings and structural analysis.
- 2) Notify the Authority's Security Officer and provide the following information:
 - (a) government-issued photo identification for all site visitors;
 - (b) a detailed statement indicating the purpose for the site visit;
 - (c) the proposed date and time for the site visit;
 - (d) the estimated start and finish time for the site visit; and
 - (e) any additional information reasonably requested by the Authority's Security Officer.
- 3) All Certificates of insurance must be supplied for Tenant **and** any subcontractors that will be on site naming the Erie County Water Authority as an additional insured.
- 4) The Tenant is solely responsible for supplying the required information for their contractors and any sub-contractors.
- 5) Tenant is responsible for contractor and subcontractor access to the facility. Tenant and its Contractor, InfraServices Group Wireless, LLC, are solely responsible for picking up and returning the key and securing the facility upon departure.

No person may visit any Authority property without the authorization of the Authority and/or its Security Officer.

ADDENDUM 2

In accordance with the terms and conditions of the Lease entered into with the Erie County Water Authority, an **ACORD25-Certificate of Liability Insurance** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier authorized to do business in the State of New York and maintaining an AM Best Rating of A- or better showing the Authority as Certificate Holder and included as additional insured. You should share these requirements with your current insurance agent, broker or insurance company.

Insurance Requirements

TENANT, at its own expense, shall maintain the following minimum insurance on its own behalf, and furnish to the Authority certificate of insurance evidencing same and reflecting the effective date of such coverage as listed below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Authority of the TENANT's obligation to maintain the insurance set forth herein. The insurance required shall not be cancelled, not renewed, or materially changed after the issuance of the certificate of insurance required herein, without written notice.

A. Commercial General Liability:

- \$2,000,000 General Aggregate
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal Injury/Advertising Liability
- Erie County Water Authority to be included as an Additional Insured
- Insurance to be primary and non-contributory

B. Automobile Liability:

- \$1,000,000 Each Accident
- Erie County Water Authority to be included as an Additional Insured

C. Umbrella Liability

- \$5,000,000 Each Occurrence
- \$5,000,000 Aggregate
- Erie County Water Authority to be included as an Additional Insured

D. Workers Compensation:

Part 1: Workers Compensation: Statutory

Part 2: Employer's Liability: \$1,000,000

****C 105.2 Required**

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2

E. New York Disability Benefits Liability: Statutory coverage if New York State domiciled employees are used.

****DB 120.1 Required**

Certificates of Insurance, and renewals, on forms approved by the New York State Department of Insurance (such approval shall not be unreasonably withheld), must be submitted to ECWA prior to executing the rental agreement/contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by AM Best no lower than "A-" with a Financial Strength Code (FSC) of at least VII.

Outside vendors shall INCLUDE ECWA as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement, on ALL liability policies.

Any liability coverage on a "claims made" basis should be designated as such on the Certificate of Insurance.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer's National Association of Insurance Commissioners (NAIC) identifying number of AM Best appears on the Certificate of Insurance.

Acceptance of a Certificate of Insurance and/or approval by ECWA shall not be construed to relieve the party renting space of any obligations, responsibilities, or liabilities.

Any questions may be directed in writing to ECWA Claims Representative/Risk Manager by US mail – Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203-2494.

WORKERS COMPENSATION IMMUNITY WAIVER:

In any and all claims against the Authority by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor (including any of the Subcontractor's subcontractors) or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

MISCELLANEOUS:

Notice of Cancellation or Non-Renewal Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, TENANT shall provide Erie County Water Authority with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements herein.

Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth herein shall be delivered to Erie County Water Authority prior to renewal.

No modifications or amendment of the Insurance Requirements contained herein shall be effective unless in writing and signed by both parties and approved by the Authority.

ADDENDUM 3

[THIS FORM IS INTENDED TO BE USED AS AN EXHIBIT OR ADDENDUM TO ANY SUBCONTRACT – IT SHOULD NOT BE USED BY ITSELF AS A SOLE CONTRACT DOCUMENT]

ADDENDUM AGREEMENT

This Addendum Agreement ("Addendum Agreement") between AT&T MOBILITY (hereinafter referenced as "Contractor") and [Name of Downstream Contractor] (hereinafter referenced as "Subcontractor") is being entered into by the parties for any and all work done for, with, or on behalf of AT&T MOBILITY (hereinafter the "TENANT") at the Leased premises 225 Frederick Road, Tonawanda, New York.

In accordance with the terms and conditions of the Lease entered into with the Erie County Water Authority on [Inset Date], an ACORD25-Certificate of Liability Insurance and ACORD 855 NY-NY Construction Certificate of Liability Addendum shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing the Authority as Certificate Holder and additional insured. You should share these requirements with your current insurance agent, broker or insurance company.

Insurance Requirements

Prior to the commencement of any work designated in any contract or agreement to which this Addendum Agreement is attached, and until at least the final completion and acceptance of the work under the contract or agreement to which this Addendum Agreement is attached, the Subcontractor, at its sole expense, shall maintain the following minimum insurance on its own behalf, and furnish to the Authority certificates of insurance evidencing same and reflecting the effective date of such coverage as listed below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the Authority of the Subcontractor's obligation to maintain the insurance set forth herein. The insurance required shall not be cancelled, not renewed or materially changed after the issuance of the certificate of insurance required by this Addendum Agreement.

A. Worker's Compensation, Occupational Disease & Employer's Liability Insurance:

Worker's Compensation, Occupational Disease & Employer's Liability Insurance in accordance with the applicable laws and statutes to cover any injuries or illness to employees and any other person eligible for compensation, and the liability of the employer thereof to any person or organization, as follows:

Worker's Compensation & Occupational Disease: Statutory

Employer's Liability: \$1,000,000 bodily injury by accident or disease, except for work/employers subject to the New York Worker's Compensation Law, in which case insurance shall be unlimited.

All such coverage shall: not contain any exclusion for injuries to sole proprietors, partners, members of limited liability companies or executive officers of any corporate entity; and provide for a "Waiver of Subrogation" endorsement in favor of the Owner/Contractor.

Any Contractor/Subcontractor with a principal place of business located outside of the State of New York must include New York under Part 3A of the policy.

B. Commercial General Liability

Commercial general liability insurance as provided under the ISO Commercial General Liability Coverage Form, CG 00 01, or its equivalent, for claims of Bodily Injury, Property, Damage and Personal and Advertising Injury, with limits of not less than:

Per Occurrence and Personal & Advertising Injury -

\$1,000,000.00

General Aggregate & Products/Completed Operations Aggregate -	\$2,000,000.00
Fire Damage Legal Liability/Damage to Rented Property -	\$100,000.00
Medical Payment (per-person) -	\$5,000.00
The coverage must include the following:	

- i. Liability assumed by the insured in an "insured contract" as that term is defined in the ISO Commercial General Liability Coverage Form, CG 00 01;
- ii. Products/Completed Operations liability for a period of three (3) years after acceptance of the work;
- iii. A per project aggregate of \$2,000,000.00;
- iv. A "Waiver of Subrogation" Endorsement in favor of the Owner/Contractor;
- v. Exterior Insulation and Finish System ("EIFS") coverage must be specifically included or provided separately where the Contractor/Subcontractor work under this Agreement or in any contract or agreement to which this Addendum is attached in any way involves EIFS;
- vi. The coverage shall not include any provision, definition, exclusion or endorsement which in any way would serve to eliminate the insurance to any insured or additional insured for liability for bodily injury or property damage arising from work performed in New York State, for claims made under the New York Labor Law or for claims made by employees, subcontractors and employees of subcontractors hired to perform work by any insured or additional insured pursuant to work that is subject to this Addendum Agreement or in any contract or agreement to which this Addendum Agreement is attached; and
- vii. The insurance is to be provided through insurers licensed and admitted to do business in the State of New York, with an AM Best financial rating of A- or better, or otherwise specifically approved by the Owner.

The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis on both the ongoing and completed operations coverage required herein utilizing the ISO endorsements: CG 2010 04 13 or CG 2038 04 13 (or their equivalent) for ongoing operations; and CG 2037 04 13 (or its equivalent) for completed operations. The Additional Insured coverage shall contain no special limitation or limitation on the scope of the protection afforded to the Additional Insureds.

C. Commercial Automobile Liability Insurance:

Commercial Automobile Liability insurance covering the ownership, maintenance and use of all Owner, Non-Owner and Hired Vehicles by the Subcontractor with combined Bodily Injury and Property Damage limits including pollution transit coverage of \$1,000,000.00 per accident. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis. A "Waiver of Subrogation" in favor of the Authority must be included.

D. Commercial Umbrella/Excess Liability Insurance:

Commercial Umbrella/Excess Liability Insurance coverage with limits of \$5,000,000.00 per occurrence and a \$5,000,000.00 aggregate limit. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory

basis. A "Waiver of Subrogation" in favor of the Authority must be included.

E. Pollution Liability:

Where the Subcontractor is performing work that is subject to this Addendum Agreement or to any contract or agreement to which this Addendum Agreement is attached, pollution liability coverage applicable to the type of work/operations being performed in the amount of \$5,000,000.00 per occurrence and \$5,000,000.00 aggregate limit must be provided. The Authority, its officers, directors, partners, representatives, agents, and employees must be named as Additional Insureds on a primary and non-contributory basis. A "Waiver of Subrogation" in favor of the Authority must be included.

F. Owner and/or Rented Tools or Equipment:

Property insurance covering all owned, rented, leased, and/or borrowed tools or equipment of the Subcontractor or used by the Subcontractor in connection with the work that is subject to this Agreement or to any contract or agreement to which this Addendum is attached, in an amount equal to the replacement cost of such tools or equipment. A "Waiver of Subrogation" in favor of the Authority must be included.

JOB-SITE SAFETY

The Authority makes no representation with respect to the physical conditions or safety of the Project Site. The Subcontractor shall, at its own expense, protect from injury its employees engaged in the performance of the Work. The prevention of accidents to all workers engaged in the Subcontractor's work and others affected by the Subcontractor's work is the responsibility of the Subcontractor. Subcontractors shall comply with all applicable federal, state, labor, and local laws and regulations and codes concerning safety.

For purposes of this Addendum Agreement, "Project Site" means the entire construction site, or the various separately identifiable parts of the site described in any contract or agreement to which the Addendum Agreement is attached, and as described in the Primary Contract with the Authority.

WORKERS COMP IMMUNITY WAIVER:

In any and all claims against the Authority by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor (including any of the Subcontractor's subcontractors) or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

HOLD HARMLESS / INDEMNIFICATION:

To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Authority and its heirs, executors, administrators, successors, assigns, affiliates, employees and agents (hereinafter referenced as "Owner Indemnitees") from and against any and all actions, claims, liabilities, damages, losses and expenses, including but not limited to bodily injury, death and property damage, and reasonable attorney's fees and costs (including those incurred in the defense of any such underlying claim, as well as those incurred in the enforcement of this Addendum Agreement and/or in the prosecution of any claim for indemnification by the Authority) arising out of or resulting from, or alleged to arise out of or result from, the Subcontractor's work (including the work by any of the Subcontractor's subcontractors), except to the extent caused by the negligence or willful misconduct of any Owner Indemnitees.

MISCELLANEOUS:

To the extent any claim is not covered by the insurance required hereunder, [INSERT] agrees to indemnify, defend and hold Erie County Water Authority from and against any and all injury, loss, damage, liability, costs or expenses arising directly from the installation, use, maintenance, repair or removal of [INSERT] communication facility, except to the extent attributable to the negligent or intentional act or omission of the Erie County Water Authority, its employee, invitees, agents or independent contractors.

If any term or provision of this Addendum Agreement conflicts with or is otherwise inconsistent with any term or provision in the Primary Contract or any prior written agreement entered between the parties, the terms and provisions contained herein shall govern and control.

This Addendum Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns. This Addendum Agreement, its terms and any claims arising therefrom, shall be interpreted and construed in accordance with the laws of the State of New York.

This Addendum Agreement may be executed via facsimile or email in any number of counterparts, all of which taken together shall constitute one and the same agreement. No waiver by a party of any breach by the other party of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

No modification or amendment of this Addendum Agreement shall be effective unless in writing and signed by both parties and approved in writing by the Authority. If any term or provision of this Addendum Agreement shall to any extent be invalid or unenforceable, the remainder of this Addendum Agreement shall not be affected thereby, and each provision of this Addendum Agreement shall be valid and enforceable to the fullest extent permitted by law.

AT&T MOBILITY

[Insert name of Downstream Contractor]

[Print Name and Title of Representative]

[Print Name and Title of Representative]

Date: _____

Date: _____

Performance Bond

Bond Number: _____

Site Number: _____

KNOW ALL BY THESE PRESENTS, That we AT&T MOBILITY 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, Georgia 30319 as Principal, hereinafter called Principal, and [COMPANY NAME AND ADDRESS], a [State] corporation, as _____, hereinafter called _____, are held and firmly bound unto Erie County Water Authority, 295 Main Street, Room 350, Buffalo, NY 14203-2494, as Obligee, hereinafter called Obligee, in the amount of [Dollar Amount] for the payment of which sum, well and truly be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has obtained or is desirous of obtaining a Site Lease Agreement from Erie County Water Authority for the telecommunications facility located at 225 Frederick Road, Tonawanda, New York, and

WHEREAS, as a condition of said Site Lease Agreement Principal is required to provide a Bond guaranteeing the faithful performance of terms and conditions at said location.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if Principal shall faithfully perform terms and conditions in accordance with the said Site Lease Agreement, then this obligation is void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that;

1. It shall be a condition precedent to any right of recovery hereunder, that in event of any default on the part of the Principal, a written statement of the particular facts of such default shall be forwarded to the _____, within sixty (60) days of the occurrence of such default, delivered by registered mail to _____ at _____.
2. That no action, lawsuit or proceeding shall be had or maintained against the [COMPANY] on this Bond unless the same be filed and properly served upon the [COMPANY] within one year from the effective date of the cancellation of the Bond.
3. That no right of action shall accrue under this Bond to or for the use of a person or entity or other than the Obligee, and its successors and assigns.
4. This Bond shall become effective [DATE].
5. This Bond shall continue in full force and effect until cancelled by the [COMPANY] by providing thirty (30) days written notice to the Obligee.
6. The liability of the [COMPANY] shall in no event exceed the aggregate penal sum of the Bond penalty.
7. If any conflict or inconsistency exists between the [COMPANY]'s obligation or undertakings as described in the Bond and as described in the underlying document, then the terms of the Bond shall prevail.

IN WITNESS WHEREOF, the said Principal and [COMPANY] have signed and sealed this instrument on this [DATE] day of [MONTH], [YEAR].

[Title] _____

By: _____

[Title] _____

By: _____

DRAFT