



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

From: Mark S. Carney, General Counsel
John DelMonte, Associate Attorney

Date: August 24, 2023

Subject: Termination of Verizon “Pleasantview Tank” Lease (the “Lease”)

The above referenced Lease originally entered into on December 1, 1996, was terminated upon the mutually agreed expiration of Verizon’s holdover term on May 31, 2023. In accordance with Sections 16 and 17 of the Lease, Verizon performed the decommissioning removal of its cellular installation facilities pursuant to the Authority’s required guidelines which was supervised and approved by ECWA’s Risk Manager and Security Officer being satisfactorily completed. The attached Termination Agreement fairly and accurately represents the mutual acknowledgement of the termination and has been signed by Verizon’s authorized representative. It is recommended by the Legal Department that it be approved and executed by the Board.

The discussions leading up to the termination also included Verizon’s agreement to abandon and transfer a 10’ x 20’ shelter previously installed on the leased premises at nominal cost to ECWA. The shelter was inspected by ECWA’s personnel and found to be in suitable condition for potential future use. To complete the transfer Verizon prepared and executed an “as-is” Bill of Sale which has been reviewed and approved by the Legal Department and recommends that it be approved and executed by the Board.

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

Contract: _____ **Project No.:** _____
Project Description: Termination of Verizon Lease for Pleasantview Tank and Bill of Sale for Shed

Item Description:





<input checked="" 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>Termination Agreement and Bill of Sale</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 type="checkbox"/> Chief Operating Officer	_____	Date: _____
<input checked="" type="checkbox"/> Executive Engineer		Date: 09/08/2023
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input checked="" type="checkbox"/> Risk Manager		Date: 9/6/2023
<input checked="" type="checkbox"/> Chief Financial Officer		Date: 09/06/2023
<input checked="" type="checkbox"/> Legal		Date: 9-6-2023

APPROVED FOR BOARD RESOLUTION:

<input type="checkbox"/> Secretary to the Authority		Date: 9/8/2023
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Remarks: _____

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

BILL OF SALE

THAT, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless, a Delaware limited liability company, successor in interest to Upstate Cellular Network ("Seller"), hereby sells, transfers, conveys, assigns and delivers to Erie County Water Authority, a public benefit corporation ("Buyer"), to have and to hold for its own use and benefit forever, and Buyer hereby purchases, accepts and acquires from Seller, all of Seller's right, title and interest in the furniture, fixtures, and equipment listed in Exhibit A (together, the "Personal Property") which is, as of the date hereof, located at 12 Pleasantview Drive, Lancaster, New York 14086 (the "Premises"). The Premises was previously leased by Buyer pursuant to that certain Lease dated December 1, 1996 (the "Lease"). The Lease has been terminated or will be terminated by Buyer and Seller pursuant to a separate agreement.

Buyer acknowledges and agrees that notwithstanding anything in the Lease to the contrary, including, without limitation, any obligation on the part of Seller to remove the Personal Property from the Premises and restore the Premises to its original condition upon the expiration or termination of the Lease, Buyer and Seller have agreed that the Personal Property shall remain at the Premises. Accordingly, Seller shall have no obligation to remove the Personal Property or otherwise restore the areas of the Premises within which the Personal Property is located. Buyer hereby accepts the Seller's surrender of the Premises in the condition as it exists as of the date hereof.

As of the date hereof, Seller warrants to Buyer that (i) Seller is the owner of the full legal and beneficial title to the Personal Property, (ii) Seller has the good and lawful right to sell the Personal Property, and (iii) that good and marketable title to the Personal Property is hereby vested in Buyer. To the extent allowed by law, this is the only warranty that Seller makes with respect to the Personal Property.

Buyer acknowledges that the Personal Property (including associated supplies) may be regulated under laws relating to the protection of human health and the environment. Buyer further acknowledges that it is the Buyer's responsibility to comply with all applicable government requirements and to take all steps necessary to protect its employees and others who may be exposed to the regulated components of the Personal Property. Buyer acknowledges that the Personal Property may be regulated for many reasons including, but not limited to:

- (a) The Personal Property may have associated registration, permit, license, certification, reporting, closure, notification and/or other requirements in order to maintain, operate, service, remove, relocate, remove and/or dispose of the Personal Property;
- (b) The Personal Property may contain or operate with chemicals or components that contain materials or substances that are deemed toxic and/or hazardous under a Federal, State or local law and which may have the potential to cause injury to employees and/or the environment;

- (c) The Personal Property may have the potential for causing harm if operated or maintained improperly or without taking appropriate safety precautions; and/or
- (d) The Personal Property may also be subject to other regulatory requirements.

Exhibit B lists some of the types of regulated Personal Property that may be transferred hereunder. Buyer acknowledges that this list is provided for informational purposes only. It is not intended to specifically list any or all of the regulated Personal Property located in the Premises, but is only a sample of the types of regulated Personal Property typically located in premises leased by Seller. It is possible that other types of regulated Personal Property and materials are being transferred to Buyer, and it is Buyer's responsibility to determine any and all regulatory requirements associated with the Personal Property and to comply with any and all such requirements.

If any of the regulated Personal Property requires permits, registrations or other notifications and/or actions by or to the government (collectively, "Regulatory Requirements"), then Buyer agrees that it shall, within the time period allowed by law but in any case not more than thirty (30) days, file any and all documentation (and pay any fees) necessary to meet the applicable Regulatory Requirements and this shall include all actions necessary to assure that Buyer, and not Seller, is named as the owner of and person responsible for such Personal Property. Buyer hereby accepts the assignment of any Regulatory Requirements related to the Personal Property as of the date hereof or as soon after the date hereof as is permitted by the applicable governmental regulations and laws. In the event that the assignment of the Regulatory Requirements to Buyer does not become effective as of the date hereof, Buyer shall indemnify and hold harmless Seller and its parent, affiliate and subsidiary companies from any liability relating to the Regulatory Requirements from and after the date hereof, including, without limitation, any penalties for non-compliance with the Regulatory Requirements.

The Personal Property is not new, and Buyer acknowledges and agrees that Seller and Seller's employees, agents and representatives have not made any express or implied representations, statements, or inducements about the condition of the Personal Property or the uses or operation thereof. Without limiting the foregoing, Seller shall not be liable for or be bound by any oral or written statements or representations pertaining to the condition or use of the Personal Property, or any other information respecting same furnished by Seller or any employee, agent or representative of Seller or other person purportedly representing Seller. Buyer has had the opportunity to independently examine the Personal Property and to satisfy itself of the condition of the Personal Property. Buyer hereby accepts the Personal Property "AS IS" and at its own risk. From and after the date hereof, Buyer agrees to indemnify and hold Seller and its parent, affiliate and subsidiary companies harmless from any and all liability in connection with the transfer, ownership, operation, maintenance and all use of the Personal Property, including, but not limited to, claims arising out of the compliance status of the Personal Property, exposures to hazardous substances and the ultimate disposal of the Personal Property. Except as may be required by law and the above warranty with respect to title, **SELLER DISCLAIMS ALL WARRANTIES FOR THE PERSONAL PROPERTY WHETHER EXPRESS OR**

IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES THAT THE PERSONAL PROPERTY IS MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE.

This Bill of Sale shall inure to the benefit of Buyer, its successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed and delivered this _____ day of _____, 20____.

SELLER:

BUYER:

Bell Atlantic Mobile Systems LLC
d/b/a Verizon Wireless

Erie County Water Authority
a public benefit corporation

By:  _____

By: _____

Name: DENNY BURDICK

Name: _____

Title: SA. MANAGER RE/REG

Title: _____

AUG 17, 2023

EXHIBIT A

THE PERSONAL PROPERTY

(1) 10' x 20' shelter located on the Premises

EXHIBIT B

LIST OF REGULATED EQUIPMENT TYPICALLY LOCATED IN SELLER PREMISES

Potentially Regulated Equipment and Constituents

The following list contains Personal Property that may be covered by the Bill of Sale that may contain toxic, hazardous or otherwise regulated substances. The list is not intended to be all-inclusive.

- Generators
 - Oils
 - Fuel
 - Glycols
 - Heavy Metal Electrical Components

- Above Ground/Underground Storage Tanks
 - Fuel
 - Heavy Metal Electrical Components

- Batteries
 - Sulfuric Acid Electrolyte Solution
 - Lead/Cadmium Plates

- Modular/Stand-Alone Air Conditioning Units
 - Glycols
 - Heavy Metal Electrical Components
 - HCFC Refrigerants

- HVAC Systems
 - Glycols
 - Heavy Metal Electrical Components
 - HCFC Refrigerants
 - Scale Inhibitors/Biocides

- Computers/VDTs and Electrical Components
 - Heavy Metal Circuitry Solders
 - Leaded Glass/Phosphorus Coated Glass

- Fire Suppression System
 - Halon

Potential Registrations and/or Permits

The following is a list of Personal Property that may be covered by the Bill of Sale that may require a registration and/or permit. The list is not intended to be all-inclusive with respect to the type of actions required or the Personal Property that is subject to either the listed actions or other actions.

- Above Ground/Underground Storage Tank Registration and Municipal/Fire Marshal Permits;
- Generator Registration and/or Air Emissions/Operating Permits;
- Hazardous Materials Inventory Reporting, Permits and Emergency Response Plans; and
- Spill Control and Countermeasure Plans.

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this "Termination Agreement") is made as of the _____ day of _____, 20____, by and between Erie County Water Authority ("Landlord") and Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless, successor in interest to Upstate Cellular Network ("Tenant").

WITNESSETH

WHEREAS, pursuant to that certain Lease (the "Agreement"), dated as of December 1, 1996 Landlord leased to Tenant certain premises commonly known and referred to as the "Pleasantview Tank" located on a parcel of land with a street address of 12 Pleasantview Drive, Lancaster, New York 14086 more fully described therein (the "Premises"); and

WHEREAS, Landlord and Tenant desire to terminate the Agreement.

NOW, THEREFORE, in consideration of the agreements and undertakings of the Landlord and Tenant set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant hereby agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Agreement.
2. Termination Date. Notwithstanding anything else to the contrary, the Term is hereby amended so that the Agreement shall automatically terminate effective as of May 31, 2023.
3. Release. Landlord (for itself and its successors and assigns and each of its partnerships, corporations or other persons, entities or enterprises owned by, related to or affiliated with Landlord and their respective successors and assigns) hereby RELEASES, ACQUITS, AND FOREVER DISCHARGES Tenant and all partnerships, corporations and other persons, entities or enterprises owned by, related to or affiliated with Tenant or their respective successors, assigns, representatives, employees, agents, directors and officers from any and all claims, demands, actions, causes of action, liabilities, debts or obligations, of any kind or nature whatsoever, whether known or unknown, Landlord may now or hereafter have arising under, related to or associated with the Agreement and/or the Premises.
4. Successors and Assigns. This Termination Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
5. Counterparts. This Termination Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

6. No Third Party Beneficiaries. With the exception of the parties to this Termination Agreement (and those persons, entities and enterprises described in Section 3 hereof), the parties do not intend to confer, and there shall not exist, any right on the part of any person, entity or enterprise to claim any right, remedy or benefit under this Termination Agreement.

7. Headings. The headings of the sections of this Termination Agreement are inserted for convenience only and shall not be deemed to constitute part of this Termination Agreement or to affect the construction hereof.

8. Authority. Each party hereby represents and warrants to the other party that such party has the full power and authority to execute and deliver this Termination Agreement and to perform hereunder without the necessity of any act or consent of any other person, entity or enterprise.

9. Severability. Any term or provision of this Termination Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Termination Agreement or affecting the validity or enforceability of any of the terms or provisions of this Termination Agreement in any other jurisdiction. If any provision of this Termination Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

10. Choice of Law. This Termination Agreement shall be governed by and construed in accordance with the laws of the state where the Premises is located, without regard to its conflict of law principles.

11. Entire Agreement. This Termination Agreement is the complete and entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings (whether written or oral) with respect to the subject matter hereof.

12. Amendments. The terms and conditions of this Termination Agreement may be amended or waived only in a writing executed by duly authorized representatives of the parties hereto.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Termination Agreement as of the date first written above.

Landlord:

Erie County Water Authority

By: _____

Name: _____

Title: _____

Date: _____

Tenant:

Bell Atlantic Mobile Systems, LLC
d/b/a Verizon Wireless

By:  _____

Name: DENNY BUNDICK

Title: SR. MANAGER RE/REG

Date: AUG 17, 2023