



**ERIE COUNTY WATER AUTHORITY**  
**INTEROFFICE MEMORANDUM**  
4/29/2021 STAFF MEETING  
April 13, 2021

TO: Terrence D. McCracken, Secretary to the Authority  
FROM: Lavonya C. Lester, Director of Administration *LCL*  
SUBJECT: Recommended Terms and Conditions for New Cell Tower Leases

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Bench Strength Partners Inc., ("BSP") is a consulting firm that solely focuses on assisting local government agencies in the management of their portfolios of cell antenna leases, including the negotiation of new leases, lease amendments, and lease renewals using the fair market value of the antenna locations.

The Authority signed an agreement with "BSP" on 10/31/2019 after soliciting a Request for Information to (10) ten vendors obtaining only (2) two prospective responses. The Authority found "BSP" to be the best fit for this professional service. The scope of services to be provided in the agreement are as follows:

- I. *Negotiate leases, licenses, lease buyouts or other agreements ("Cell Lease[s]") for the rental of space on the Authority's property for the placement of cellular antennas and related equipment, including the installation of small cell systems, for all location(s) owned by the Authority.*
- II. *BSP shall not be responsible for drafting the Cell Lease. Instead, BSP will work with Authority counsel and suggest model lease terms for the Authority's counsel to incorporate into the final Cell Lease, or in an offer or proposal for a Cell Lease.*

As part of the negotiation process, BSP has reached out to Sprint and T-Mobile because the Authority has (2) expired contracts, (2) contracts that will be expiring in November 2021, and (1) contract expiring in 2022. BSP has established several important Heads of Terms ("HOT") and tower fees that will be proposed to Sprint and T-Mobile and upon the approval by the Authority board, negotiated so that it may be incorporated into the new cell antenna lease agreements.

I am requesting the board to review and approve the initial Heads of Terms and tower fees so that BSP can proceed with the negotiation procedures. BSP will contact Sprint and T-Mobile to finalize the proposed negotiations.

All final cell tower leases will be created by the Authority's Legal Department and submitted to the board for final approval and execution.

Enclosed: Proposed Heads of Terms ("HOT"), New proposed cell antenna fee.



MUNICIPAL CELL TOWER LEASE EXPERTS

## **Tower Optimization Process<sup>sm</sup>**

### **Proposed Heads of Terms (HOT)**

**Dated:**

**Client:** Erie County Water Authority (ECWA)

**Carrier Name:** T-Mobile & Sprint

**Site Location:**

**Site Name:** Windom Station/Wehrle Tank/Pleasant View Tank

**Structure Type:**

**Carrier Site Ref#:**

**Current Lease Expiration Date:** Various

**Type of Proposed Agreement:** New Lease

**Major Terms of Lease Agreement as follows will expire six months from the above date:**

- 1. Term:**
- 2. Effective Date:**
- 3. Equipment:** Equipment as outlined in most recent completed Construction Drawings dated \_\_\_\_\_ reflecting the proposed installation. A structural engineering report reflecting the proposed \_\_\_\_\_ loading on the Tower will be required.
- 4. Lease Fee:** \_\_\_\_\_ per year payable in annual installments. The first payment is due withing 45 days of lease signing will include all retroactive rent shortfalls and the current years lease fee. Thereafter the lease fee will be due on each anniversary of the Effective Date.
- 5. Annual Inflator:** Each year the Lease Fee will increase by 3%.
- 6. Termination Fee:** Any termination of the lease beyond the initial guaranteed term will require 6 months written notice and a termination fee equal to the rents due for 6 months from such date of termination.
- 7. Attorney and Engineering Review:** A \$5,000 fee will be due 30 days after signing to cover legal and engineering review of the lease and proposed equipment.
- 8. Standard Inclusions in Agreement:**
  - a) Any work to be performed on the facility will be subject to supervision by a designee of the ECWA. Reimbursement of said designee will be at an hourly rate of \$150/hr. Lease rights will allow for a number of work hours per month where no reimbursement will be required.



MUNICIPAL CELL TOWER LEASE EXPERTS

## **Tower Optimization Process<sup>sm</sup>**

- b) The ECWA, at its discretion, will be entitled to perform annual inspections and structural reports on the tower and all installations by the ECWA's designated engineering firm. All costs associated with the inspections and structural reports and any suggested improvements necessary to maintain the operation and integrity of the tower will be shared equally by all carriers colocating on the tower. Any recommended changes or improvements required to a specific carrier's installation will be borne solely by that carrier.
- c) Modifications and upgrades of/to equipment will be governed by the ECWA's Telecommunications Facility Upgrade Protocol a copy of which will be attached to the Agreement.
- d) Access to the tower facility and compound will be governed by the ECWA's current Tower Access Policy, a copy of which will be attached to the Agreement.
- e) Holding over tenancy will be subject to annual License Fee at two times the Lease Fee applicable to the immediately preceding period.
- f) Maintenance and painting requirements will be included in the agreement outlining notification requirements. All costs for removal, temporary accommodation and replacement of equipment will be borne by tenant.
- g) Other than acts of god or force majeure, there will be no arbitrary termination of the Lease Agreement for the carrier.

Exhibit 2  
Upgrade Protocol

**CLIENT TELECOMMUNICATIONS**

**FACILITY UPGRADE PROTOCOL**

*Revised February,  
2020*

- A. All equipment upgrade submissions must comply with all applicable ordinances and regulations of the **CLIENT** and all applicable regulations, rules, standards, requirements and conditions of the Federal Communications Commission and **New York State Building Code**.
- B. Initial written submission of LESSEE's proposed equipment upgrades must be delivered to **CLIENT NAME AND ADDRESS**, Attention: **NAME OF DESIGNATED CONTACT**.
- C. The initial submission ("Initial Submission") must include:
  - (I) Copy of existing As Built on file with LESSEE, encompassing the telecommunications equipment that will be upgraded or changed in some manner;
  - (2) Drawings showing proposed equipment upgrades or changes and a detailed written scope of work including plans and specifications describing the proposed equipment upgrades or changes ("Scope of Work"); and
  - (3) Estimated construction schedule, detailing length of time for LESSEE to perform construction work.
- D. Upon review of the Initial Submission, the LESSOR may make reasonable written requests for additional related documentation and/or modifications.
- E. Upon receipt of a request under Paragraph C, LESSEE shall supply the additional related documentation and/or make modifications to the Initial Submission, as reasonably requested by the LESSOR.
- F. A "Final Submittal" shall be made by LESSEE to the LESSOR in the same manner described for the Initial Submission in Paragraph B. The Final Submittal shall include the following.
  - I. Final plans and specifications for the proposed equipment changes, and a revised Scope of Work, if different from what was provided in the Initial Submission.
  - II. A Radio-frequency (RF) emissions report by a licensed engineer or other qualified professional, if LESSEE 's proposed upgrades or changes include the addition of

new antennas, to show compliance with any existing equipment and FCC regulations regarding RF emissions.

- III. Final construction schedule, detailing the length of time for LESSEE to perform the proposed work ("Construction Schedule").
- IV. An amount not to exceed \$7,500.00, hereafter referred to as the "Upgrade Deposit" shall be remitted to cover all reasonable costs incurred by LESSOR related to the proposed work, including, but not limited to, expenses incurred by the LESSOR for the review of the drawings and Scope of Work by LESSOR's staff or LESSOR'S outside engineering firm, any expense to remove any debris left behind or repair any damage done to the site by LESSEE or its contractors in completing the Scope of Work, related reasonable supervision or inspection fees, regardless of whether the proposed upgrades or changes will involve work on the equipment located at the Premises, the ground, or all of the above. LESSOR shall access the Upgrade Deposit only pursuant to the terms set forth in Paragraph M below.
- V. If, after review, LESSOR determines that the proposed upgrade will impact the structural integrity of the building, an appropriate engineering study will be undertaken. LESSOR will provide LESSEE with a written explanation of the reasons for the structural integrity study. The reasonable costs of the structural integrity study shall be paid by the LESSEE. The study shall be performed by an engineer who is mutually acceptable to both LESSEE and LESSOR. LESSEE will be responsible for the cost of any and all structural modifications or reinforcements of the building that may be required in order to accommodate any new or modified equipment added by LESSEE in connection with an upgrade. LESSEE shall include any and all structural modifications and reinforcements in the Scope of Work and the Construction Schedule. LESSOR shall have the right to deny authorization for any modifications to Property that will, in the LESSOR's judgment, materially interfere with operations of the LESSOR or diminish the usable space within the Property.
- G. Following the Final Submittal, the LESSOR and LESSEE will cooperate with each other in finalizing any further changes or modifications agreed upon by both parties.
- H. When the Final Submittal is approved by the LESSOR, the LESSOR will deliver a written Notice to Proceed delineating the approved Scope of Work and Construction Schedule. The Notice to Proceed will set forth the name, phone number and email address of the agent or representative of the LESSOR who LESSEE should contact to coordinate the approved work and access to the site.
- I. LESSEE shall confirm the date and time that LESSEE and its agents and representatives will perform the upgrade work and the names of the LESSEE agents and/or representatives who will be entering the property to perform/supervise the work. Prior to accessing the Property to perform the upgrade work the LESSEE shall provide a minimum of 48 hours' prior notice, by contacting the LESSOR agent/representative referenced in Paragraph H, at the phone number and email address provided. The LESSOR agent/representative will be reasonably available by phone during normal business hours and will not unreasonably delay LESSEE's ability to access the property to perform the upgrade

work. Once LESSEE has notified the LESSOR as indicated above, the LESSOR will provide access to LESSEE in furtherance of the Notice to Proceed, within 48 hours.

- J. The LESSOR, its engineer and/or inspector may be on site to inspect the work and confirm compliance with the Notice to Proceed. The upgrade work shall take place during normal business hours (Monday through Friday 8:00 a.m. to 4:30 p.m.). No upgrade work shall be permitted on weekends or holidays recognized by the LESSOR. Notwithstanding the foregoing, the LESSOR will consider permitting work on weekends, holidays or outside of the aforementioned normal business hours, provided LESSEE agrees to the full reimbursement for any actual, reasonable expenses associated with the time spent by LESSOR's engineer or inspector monitoring the work.
- K. Absent unforeseen and/or extenuating circumstances, LESSEE shall have sixty (60) calendar days to complete construction/upgrades after the work has started. Construction will be deemed started when the Building Permit is issued by LESSOR.
- L. Upon substantial completion of the work, LESSEE shall submit to LESSOR written notice indicating the substantial completion of the upgrades or changes to allow the LESSOR to schedule an engineering inspection. Within thirty (30) days of the LESSOR's receipt of LESSEE's written notice of substantial completion, the LESSOR shall submit to LESSEE a written acceptance of the work or a reasonable punch list of items to be completed and/or addressed. Punch list items must be directly related to the LESSEE's recently performed upgrades or changes and construction shall be deemed complete if a punch list is not submitted within the thirty (30) day period. LESSEE shall use reasonable efforts to complete all punch list items within thirty (30) days of the receipt of the punch list. If the items on the punch list are not completed within said thirty (30) days, LESSOR shall, upon ten (10) days' notice to LESSEE, have the option of completing such items at LESSEE's expense, provided that LESSOR itemizes to LESSEE all reasonable expenditures incurred and LESSEE has not completed same following the ten (10) days' notice.
- M. Once all work has been approved by LESSOR or its engineer, LESSEE shall submit at its cost and expense: (1) New As-Built drawings by an engineer or architect licensed in New York, if the upgrade modifications are substantial, or new As-Built addendum report by an engineer or architect licensed in New York to reflect minor upgrade modifications; and (2) Color photographs of the completed work.
- M. The LESSOR shall submit a final, detailed bill to LESSEE detailing the time and work reasonably performed, within sixty (60) days after LESSEE's completion of the work. LESSOR may use the Upgrade Deposit to pay such final bill. If the bill exceeds the Upgrade Deposit, LESSEE shall pay the excess within thirty (30) days after receipt of the bill. If the bill is less than the Upgrade Deposit, a refund shall be made within sixty (60) days thereafter.
- N. This Upgrade Protocol is applicable only to work where LESSEE seeks to upgrade or modify its existing equipment installation. It does not apply to: (1) maintenance or repair of any existing equipment and (2) replacement of broken or non-functioning equipment

with like kind or similar equipment.

- O. To the extent that any proposed upgrade work at the site is relatively minor and has little impact on the site, the Lessor may waive some or all of the formalities of this Upgrade Protocol provided that any such waiver must be in writing.





## MUNICIPAL CELL TOWER LEASE EXPERTS

### ECWA

#### SPRINT & T-MOBILE RENTS

Site	Tenant	Lease Expiration Date	Proposed Annual Rental	Year	Current Annual Rent	Increased Rent
PLEASANT VIEW WT DEPEW	SPRINT	LXD 1/8/2017	\$ 64,300	2021	\$ 35,156	\$ 29,144
			\$ 62,371	2020	\$ 35,156	\$ 27,215
			\$ 60,500	2019	\$ 35,156	\$ 25,344
			\$ 58,685	2018	\$ 35,156	\$ 23,529
			\$ 56,924	2017	\$ 35,156	\$ 21,768
						<u>\$ 127,000</u>
WEHRLE TOWER AMHERST	SPRINT	LXD 9/22/2019	\$ 72,400	2021	\$ 53,906	\$ 18,494
			\$ 70,228	2020	\$ 53,906	\$ 16,322
			\$ 68,121	2019	\$ 53,906	\$ 14,215
						<u>\$ 49,031</u>
WEHRLE TOWER AMHERST	T-MOBILE	LXD 11/14/2021	\$ 72,400	2021	\$ 53,906	\$ 18,494
PLEASANT VIEW WT DEPEW	T-MOBILE	LXD 11/2/2021	\$ 64,300	2021	\$ 53,906	\$ 10,394
WINDOM TANK SITE ORCHARD PARK, NY	T-MOBILE	LXD 7/11/2022	\$ 74,572	2022	\$ 46,875	\$ 27,697