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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

July 10, 2012

Erie County Legislature
92 Franklin Street
Buffalo, New York 14202

RE: Amendment for Lease of Space on Cell Tower at Erie Community College South Campus

Dear Honorable Members:

Attached is a proposed resolution and accompanying memorandum from Erie Community College (ECC) requesting authorization to enter into an amendment to an existing lease of space with New Cingular Wireless, PCS, LLC on the cellular tower at ECC's South Campus. The lease amendment was approved by the ECC Board of Trustees at its May 30, 2012 meeting and is attached for informational purposes.

Thank you for your consideration of this matter. If your Honorable Body requires any further information, kindly contact William D. Reuter, Chief Administrative and Financial Officer at ECC, or our office, and we will be happy to accommodate your request.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

Attachments

MEMORANDUM

TO:	Honorable Members of the Erie County Legislature
FROM:	Erie Community College
RE:	Amendment for Lease of Space on Cell Tower at Erie Community College South Campus
Date:	July 9, 2012

SUMMARY

It is recommended that the Erie County Legislature authorize the County Executive to amend the existing cell tower lease agreement with New Cingular Wireless PCS, LLC at Erie Community College's South Campus, for the transmission and reception of radio communication signals.

FISCAL IMPLICATIONS

The existing renewal lease with New Cingular Wireless PCS, LLC is for a term of five years, having commenced September 1, 2011, with rent of $24,480.00 per year but without a renewal option. The amendment to the lease calls for two separate consecutive five year terms, each to be approved in advance by the County, each escalating twenty percent (20%) per renewal. The funds received from the amended lease shall be designated for the purpose of future capital construction at Erie Community College or as operating revenues as determined by the ECC Board of Trustees.

REASON FOR RECOMMENDATION

New Cingular Wireless PCS, LLC already occupies space on the cell tower and therefore this amendment will inure further to the financial benefit of the College. As well, the company would like to replace certain equipment previously removed with technologically improved antennae.

BACKGROUND INFORMATION

In 1994 the Buffalo Telephone Company (now New Cingular Wireless PCS, LLC) constructed the microwave relay (cell) tower at ECC South at no cost to the County or College, for its use, and use by the College as well. Thereafter your Honorable Body authorized leases with other wireless telephone companies such as Sprint, AT&T, Cricket, Nextel, and T-Mobile, all of which continue to occupy space today on the tower.

In 1996 Erie County adopted its Policy and Procedures for Placing Commercial Antennas on County Properties in recognition of the expanding wireless communications industry. Under its policy and procedures, the County encouraged its departments and agencies to make available County Government buildings and lands for the citing of mobile services antennas, further stating that the re-use of existing towers and co-location of antennas on towers, County buildings or lands, is in the public interest and must be achieved whenever possible if the community is to avoid proliferation of tall communication towers.

CONSEQUENCES OF A NEGATIVE ACTION

Failure to adopt this resolution will adversely affect a potential revenue stream for Erie Community College and may well have a chilling effect on the ability to retain this lessee as a tenant going forward. Furthermore, New Cingular Wireless PCS, LLC has performed the maintenance on this cell tower since construction thereof, for the benefit of the county/college.

STEPS FOLLOWING APPROVAL

Certified copies of this resolution shall be forwarded to the Erie County Executive, President of Erie Community College, the County Division of Budget and Management, County Comptroller, County Department of Public Works and the Department of Law.

A RESOLUTION SUBMITTED BY:
ERIE COMMUNITY COLLEGE

RE: Amendment for Lease of Space on Cell Tower at Erie Community College South Campus

WHEREAS, Cingular previously constructed a cell tower at Erie Community College's South Campus, for mutual usage without cost to Erie County or Erie Community College; and

WHEREAS, Cingular entered into various lease agreements with Erie County, the current lease requiring rent of $122,400 over a five year period, paid to the College; and

WHEREAS, Cingular, now wishes to enter into a five year lease extension, with an option to extend an additional five years, subject to the County's approval, paying the college approximately $146,880 in total during the initial five year extension commencing September 1, 2015 and escalating 20% during the second five year extension paying the college approximately $176,256 in total during the five year renewal term; and

WHEREAS, the granting of this lease is routine or continuing administration and management of the existing cell tower, a Type II action pursuant to Article 8 of the Environmental Conservation Quality Review Act; and

NOW, THEREFORE, BE IT

RESOLVED, that given approval by the Erie Community College Board of Trustees and subject to approval by the County Attorney, the Erie County Executive is hereby authorized to execute a lease amendment with New Cingular Wireless, PCS, LLC to rent space on the existing cell tower at Erie Community College South Campus, and, be it further

RESOLVED, that the term of the amended lease for Cingular shall be for an initial term of five years commencing at $29,376 per year escalating 20% for the second five year term subject to County approval and, be it further

RESOLVED, that the funds received from this lease are to be budgeted for, and accounted for, as operating revenues of Erie Community College or to be designated for the purpose of future capital construction as determined by the ECC Board of Trustees, and with the College informing the County's Division of Budget and Management of how it utilizes the revenue, and, be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the County Executive, Erie Community College, Erie County Comptroller, County Attorney, County Division of Budget and Management and the County Department of Public Works.

Market: Upstate New York
Cell Site Name: Big Tree
Fixed Asset Number: 10007339

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below, is by and between County of Erie, having a mailing address of 95 Franklin Street, Buffalo, NY 14202 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 ("**Tenant**").

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated July 18, 2007, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at Erie Community College (ECC), South Campus, 4041 Southwestern Boulevard, Orchard Park, Erie County, New York, 14127 ("**Agreement**"); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to allow for the installation of replacement antennas, amplifier and radio units along with associated cables

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to permit Tenant to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the term of the Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Replacement Antennas. Landlord consents to the installation and operation of three (3) replacement antennas, for a total of nine (9), with associated cables and equipment as more completely described on attached Exhibit 3-A. Landlord's execution of this Amendment will signify Landlord's approval of Exhibit 3-A. Exhibit 3-A hereby supplements Exhibit 3 to the Agreement. Tenant previously removed the three (3) microwave dishes, associated cables and the boom that were shown on Exhibit 3.

2. Notices. Section 16 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Tenant: New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation,
Attn: Network Real Estate Administration
Re: Cell Site Name: Big Tree (NY)
FA No: 10007339
12555 Cingular Way, Suite 1300,
Alpharetta, GA 30004

With a copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site Name: Big Tree (NY)
FA No: 10007339
340 Mt. Kemble Ave.
Morristown, NJ 07960-6656

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: Richard G. Schott, Associate Vice President of Finance
Erie Community College, South Campus
4041 Southwestern Boulevard
Orchard Park, New York 14127

With a copy to: Kristin Klein Wheaton, Executive Vice President of Legal Affairs
Erie Community College, South Campus
4041 Southwestern Boulevard
Orchard Park, New York 14127

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

3. Emergency 911 Service. In the future, and at a rent and location mutually acceptable to Landlord and Tenant, Landlord agrees that Tenant may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services.

4. Addition/Extension of Term. In addition to the Renewal Term presently set forth in the Agreement (September 1, 2011 – September 1, 2016), the Agreement will renew, subject to

additional approval by the Erie County Legislature, for two (2) separate consecutive additional periods of five years upon the same terms and conditions of the Agreement, Paragraph 4B, except that the rent will increase 20% of the rent charged in the final year of the prior renewal term unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the existing term.

5. Memorandum of Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

6. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

7. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

8. Resolution of the Erie County Legislature: This First Amendment to the Lease Agreement is made and executed pursuant to the Resolution at the session of the Erie County legislature, adopted on the ___ day of ___ _, 2012, Item Reference: Comm: _____ _ of the Legislative Proceedings, a copy of which is attached hereto as Attachment 2.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the dates set forth below

"LANDLORD"

County of Erie

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

Approved as to Content:

By: _____
Name: Richard G. Schott
Associate Vice President of Finance, ECC
Date: _____

Approved as to Form:

By: _____
Name: Kristin Klein Wheaton
Executive Vice Pres. of Legal Affairs, ECC
Date: _____

"TENANT"

New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: Gary Weiss
Title: Area Real Estate & Construction Manager
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGEMENT

STATE OF NEW YORK

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Printed Name: _____

My Commission Expires: _____

LANDLORD ACKNOWLEDGEMENT

STATE OF NEW YORK

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Printed Name: _____

My Commission Expires: _____

EXHIBIT 3-A

See attached exhibit

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

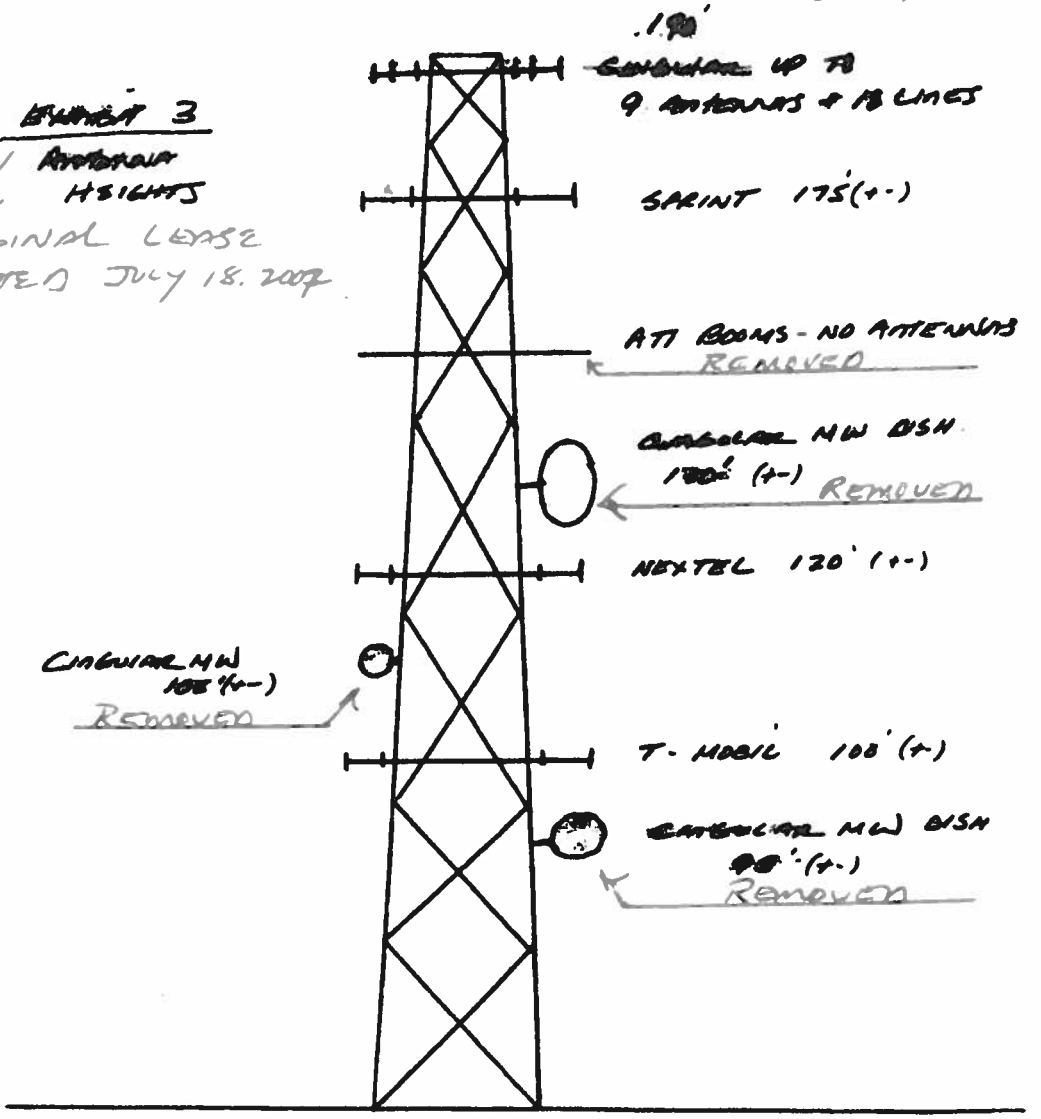
EXHIBIT 3-A

6 ANTENNAS/ INSTALLING 3 ADDITIONAL FOR TOTAL OF 9

EXHIBIT 3

ANTENNA HEIGHTS

ORIGINAL LEASE DATED JULY 18, 2007



ATTACHMENT 1

MEMORANDUM OF LEASE

Return to:
AT&T Mobility
2875 Union Road, Ste. 356
Cheektowaga, NY 14227
Attn: Network Real Estate

Re: Cell Site Name: Big Tree
Fixed Asset Number: 10007339
State: NEW YORK
County: ERIE

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this ____ day of _____, 2012, by and between County of Erie, having a mailing address of 95 Franklin Street, Buffalo, NY 14202 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 ("**Tenant**").

1. Landlord and Tenant entered into a certain Lease Agreement ("**Agreement**") on the 18th day of July, 2007, as amended by that certain FIRST AMENDMENT TO LEASE AGREEMENT dated _____, 2012 for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. The initial lease term is five (5) years ("**Initial Term**") commencing on September 1, 2006, with three (3) successive five (5) year options to renew.

3. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.

4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to

the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

"LANDLORD"

County of Erie

By: _____
Print Name: _____
Its: _____
Date: _____

"TENANT"

New Cingular Wireless PCS, LLC,
By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGEMENT

STATE OF NEW YORK

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Printed Name: _____

My Commission Expires: _____

LANDLORD ACKNOWLEDGEMENT

STATE OF NEW YORK

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

Printed Name: _____

My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page _____ of _____

to the Memorandum of Lease dated _____ ___, 2012, by and between County of Erie, as Landlord, and New Cingular Wireless PCS LLC, a Delaware liability company, as Tenant.

The Premises are described and/or depicted as follows: