

RESOLUTION NO. 2019-230

A RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE ANTENNA SITE LEASE AGREEMENT BY AND BETWEEN THE CITY OF VINELAND AND CELLCO PARTNERSHIPS d/b/a VERIZON WIRELESS CONCERNING THE VERIZON WIRELESS COMMUNICATIONS ANTENNA ARRAY LOCATED ON THE CITY WATER TOWER AT 1690 EAST OAK ROAD

WHEREAS, the City of Vineland, by Agreement dated November 30, 2009, of an Antenna Site Lease Agreement with Cellco Patnerships d/b/a Verizon Wireless, for the location of communication antenna on the City's water tower at 1690 East Oak Road; and

WHEREAS, the subject Verizon antennas are to be located, in connection with the City's pending project for the painting of the subject Oak Road water tower, for the convenience of Verizon, in a manner that allows for Verizon to avoid removal of same while the tower is being painted, as provided and described in Verizon's proposed First Amendment To Lease Agreement (copy attached as **Exhibit "A"**); and

WHEREAS, Verizon has agreed to indemnify and hold harmless the City and its painting contractor from any liability for claims, other than those arising from the City's and/or its painting contractor's gross negligence or willful misconduct during the painting contract, arising out of, incidental to, or in connection with the contractor's painting; and

WHEREAS, given the undertakings of the parties to the subject agreement, including the reconfiguration of Verizon's equipment, Verizon has requested the City's approval of the subject First Amendment to Lease Agreement; and

WHEREAS, the Director of the Vineland Municipal Utilities and the Superintendent of the Water Utility have recommended the execution of the subject First Amendment to Lease Agreement; and

WHEREAS, City Council determines it to be in the best interests of the City to authorize execution of the subject First Amendment to Lease Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland that the Mayor and City Clerk be and they are hereby authorized to execute a First Amendment To Lease Agreement as set forth in **Exhibit "A"** attached.

Adopted: _____

President of Council

ATTEST:

Keith Petrosky, RMC
Municipal Clerk

EXHIBIT A

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement, hereinafter referred to as the "Amendment", is made this _____ day of _____, 2019 (the "Effective Date"), between the City of Vineland, with its offices located at 640 East Wood Street, Vineland, New Jersey 08362, hereinafter referred to as the "City", and Cellco Partnership, a Delaware general partnership, d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as "Carrier". At times, the City and Carrier may be referred to collectively as "the Parties".

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WHEREAS, the Parties entered into that certain Lease Agreement dated November 30, 2007 (the "Agreement") whereby Carrier leased certain space on the City's water tower located on real estate owned by the City that is known as Block 227, Lot 8 on the Tax Map of the City of Vineland; and

WHEREAS, the City has determined that the water tower is in need of painting and notice was given to Carrier; and

WHEREAS, the City has retained a contractor to perform the painting of the water tower on the City's behalf; and

WHEREAS, in furtherance of such painting and future maintenance of the water tower, a corral will be installed on the water tower for the installation of Carrier's and other wireless operators' equipment, with Carrier's antenna arrays to be moved from existing mounts on the water tank to said corral; and

WHEREAS, Carrier is amenable to installing a temporary bracket onto the corral for this painting project as well as anticipation of future maintenance requirements of the water tower, in that Carrier's equipment shall not have to be removed from the water tower for this project and for future maintenance. For this painting project, four-foot extensions will be installed from the corral level to allow the City's contractor to paint the water tower and Carrier has agreed to coordinate its coaxial cable relocation and/or coaxial protection as needed. After the painting is completed, said four-foot extensions will be removed and Carrier's antennas will be relocated back to the corral level; and

WHEREAS, the Parties desire to memorialize the altered water tower equipment configuration, which shall be reflected in Exhibit A (2019) attached hereto and made a part hereof; and

WHEREAS, the City has requested that Carrier agree to forego claims against the City and/or its painting contractor that may arise from damage to Carrier's equipment, to which Carrier is amenable; and

WHEREAS, the Parties desire to memorialize the permanent relocation of Carrier's antenna arrays on the water tower.

NOW, THEREFORE, in exchange for the promises hereinafter made and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties agree that Carrier shall temporarily move its equipment from the water tank to the extensions on the corral to allow for the painting work and thereafter to permanent mounts on the corral.
2. Notwithstanding anything to the contrary in Section 19 of the Agreement regarding indemnification, Carrier hereby agrees that, except for claims arising from the City's and/or its painting contractor's gross negligence or willful misconduct during the painting project, Carrier will otherwise indemnify and hold harmless the City and/or its painting contractor for all claims arising out of, incidental to, or in connection with the contractor's painting. Such agreement by Carrier shall be for a two-year period beginning on the date when installation of the corral begins, unless an extension is agreed to by the Parties.
3. The Parties acknowledge and agree that Exhibit A of the Agreement shall be deemed deleted in its entirety and replaced with and superseded by Exhibit A (2019), which Exhibit A (2019) shall represent Carrier's allowed equipment configuration under the Agreement.
4. The Parties acknowledge and agree that there shall be no change to Carrier's current rental pursuant to this Amendment.
5. Except as modified herein, all other terms and conditions of the Agreement are hereby ratified and shall remain in full force and effect. In the event of any conflict between the Agreement and the provisions of this Amendment, the provisions herein shall prevail and shall supersede conflicting terms and conditions, if any.

IN WITNESS WHEREOF, the City and Carrier have set their hands and affixed their respective seals the date and year first written.

City of Vineland

Witness

By: _____
Anthony Fanucci
Mayor

Date: _____

Carrier:
Cellco Partnership d/b/a Verizon Wireless

By: _____
Susan Peluso
Director Network Field Engineering

Date: _____

Exhibit A (2019)