

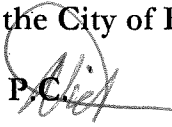
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MEMORANDUM

TO: City Council for the City of Beacon (the "City")

FROM: Keane & Beane, P.C. 

RE: Building and Rooftop Lease Agreement – Mase Hook & Ladder

DATE: October 11, 2019

Attached is the Building and Rooftop Lease Agreement (the "Lease") for the Mase Hook and Ladder Fire Hose rooftop located at 423-425 Main Street, Beacon, New York (the "Premises"), between the City ("Lessor") and Orange County-Poughkeepsie Limited Partnership, d/b/a Verizon Wireless ("Lessee"). While the entire Lease should be reviewed by the Council, we have highlighted certain terms below:

Paragraph 1: The Lease covers approximately 240 square feet of space on the ground of the Premises and approximately 40 square feet on the roof of the Premises.

Paragraph 3: Initial term of the Lease is five (5) years with annual rent payments of \$21,600.00. Within ninety (90) days of the full execution of the Lease, Lessee shall pay a one-time non-refundable signing bonus of \$500.00 as additional rent. During the initial term, rent shall increase by 2% on each anniversary of the Commencement Date.

The Lease commences upon the earlier of: (i) the date Lessee is granted a building permit by the governmental agency charged with issuing such permits; or (ii) three (3) years from the date of full execution of the Lease (the "Commencement Date").

Paragraphs 4-6: The Lease shall automatically be extended for four (4) additional five (5) year terms unless Lessee terminates it at the end of the then current term by written notice at least six (6) months prior to the end of same.

Afterwards, if not terminated, the Lease shall continue for a further term of five (5) years and for three (3) additional five (5) year terms and one (1) additional term of four (4) years thereafter until terminated by either party by giving to the other written notice at least six (6) months prior to the end of such term. The term of Lease, including all renewals, shall not exceed forty nine (49) years.

Annual rent shall increase by 2% as of each anniversary of the Commencement Date during each additional extension term.

Paragraph 8: Lessee may unilaterally replace, alter, improve, change, substitute, repair, remove, withdraw or otherwise modify any component of its communications facility, provided same does not materially increase and/or change (i) the size or the footprint of the leased area or (ii) the size or color of the equipment.

Lessee may terminate the Lease in the event that (i) any applications for governmental approvals should be finally rejected; (ii) any governmental approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Lessee determines that such governmental approvals may not be obtained in a timely manner; (iv) Lessee determines that any building structural analysis is unsatisfactory; (v) Lessee determines that the Premises is no longer technically compatible for its use, or (vi) Lessee, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary.

Paragraph 9: Lessee shall be responsible for maintaining the non-structural portions of the Premises with the exception of the telecommunications tower which will be City's responsibility to maintain once the replacement tower (at the same height as existing) is installed by Lessee.

Upon the City's request, Lessee shall temporarily relocate its equipment upon ninety (90) days' notice, to allow the City to perform maintenance and/or work at the Premises. The relocation area must be consistent with the existing location in size and compatible for Lessee's intended use. The parties will split the costs of the relocation and eventual return of the equipment 50/50.

Paragraph 9A: Upon the City's request, Lessee agrees to conduct at its expense one annual rooftop inspection by a third-party contractor chosen by the City and approved by Lessee.

Paragraph 11: Lessee shall maintain the following insurance policies and name the City as an additional insured:

- i. Commercial General Liability insurance with limits of \$5,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property
- ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of one million (\$1,000,000) each accident for bodily injury and property damage
- iii. Workers Compensation insurance providing the statutory benefits and Employers Liability with a limit of \$1,000,000 each accident/disease/policy limit.

- iv. Umbrella form or Excess liability insurance providing coverage over the insurance policies referred to in (i), (ii) and (iii) herein with a limit of \$2,000,000 per occurrence and per aggregate.

The City will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence and name Lessee as an additional insured.

Paragraph 12: Neither Party shall be liable to the other for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, with the exception of indemnification for (i) liability from personal injury or property damage arising out of the negligence or willful misconduct of the indemnifying party and (ii) environmental and industrial conditions at the Premises arising out of the indemnifying party's activities or for the indemnifying party's failure to comply with any environmental or industrial hygiene law, as prescribed in Paragraphs 10 and 30 of the Lease respectively.

Paragraph 15: At the end of the Lease, Lessee will be responsible to remove all its equipment from the Premises within ninety (90) days.

Paragraph 16: In the event of a Lessee holdover past the expiration/termination of the Lease, rent shall be equal to 150% of the rent applicable during the month immediately preceding such expiration/termination.

Paragraph 28: There is a ten (10) day period for Lessee to cure any monetary breach of the Lease and a thirty (30) day period to cure any non-monetary breach of the Lease, which will be extended if the nature of the cure is such that it cannot be reasonably accomplished in thirty (30) days and Lessee pursues the cure diligently through said period to completion.

The City has a thirty (30) day period to cure any breach of the Lease, which will be extended if the nature of the cure is such that it cannot be reasonably accomplished in thirty (30) days and the City pursues the cure diligently through said period to completion.

Paragraph 39: The parties acknowledge that the City requested that Lessee locate its telecommunications facility at the Premises rather than build a new monopole tower at a different property owned by Verizon New York, Inc. and located at 433-443 Main Street, Beacon, New York (the "Alternate Site"). This does not mean that Verizon New York, Inc. cannot enter into a lease with a different cellular provider who then proposes the construction of new monopole tower at the Alternate Site. The application pending before the Planning Board will be withdrawn.

The City reserves the right to negotiate with other telecommunications providers to

allow same to co-locate their equipment on the tower, upon Lessee's prior approval in its reasonable discretion and to the extent feasible from engineering, operations and business perspectives.

Paragraph 40: Lessee will install the City's equipment on the tower it erects so long as (i) such equipment does not interfere with and is compatible with Lessee's equipment; and (ii) at the time Lessee is installing its equipment on the tower, the City has identified, and provided at the Premises, the equipment it wishes to have installed.