

Board of Municipal Utilities  
**Meeting Minutes**  
**March 7, 2023**  
201 Miller Road  
Avon Lake, Ohio

***Call to Order – Roll Call***

The meeting was called to order at 6:30 PM. The meeting was held in-person using web-based video conferencing technology and streamed live over Facebook.

Present: Mr. Abram, Mr. Dzwonczyk, Mr. Rickey, Mr. Rush, and Mrs. Schnabel

Also present: CUE Munro, CUO Yuronich, and Attorney Coyne of Mansour Gavin.

***Approve Minutes***

Mr. Dzwonczyk presented the Minutes of the February 21, 2023 regular meeting and work session. With no additional changes, additions or corrections noted, he ordered that the minutes stand and be distributed as presented.

***Public Speakers***

City Councilman Mark Spaetzel thanked ALRW for the recent tour of facilities. He was very appreciative of the staff's professionalism, knowledge, and patience in answering all of his questions and came away with a much better understanding of what ALRW's operations consist of. He also stated that he was impressed with the amount of pride that ALRW employees exhibit in performing the work that they do.

LORCO Trustee Del Roig read a prepared statement regarding the recent default letter that was sent to the LORCO Board. Mr. Dzwonczyk thanked him for his statement and assured him his concerns would be addressed in due time. Mr. Dzwonczyk asked the Board to refrain from any back and forth debate on this topic. Mr. Roig presented a written copy of his statement to members of the Board.

***Correspondence***

Mr. Munro informed the Board that a long-time serving member of the Board, Mr. Duane Shuster, passed away Saturday March 4, 2023. Mr. Shuster served on the Board for 24 years. Mr. Munro offered condolences to Mr. Shuster's family and friends on behalf of Avon Lake Regional Water.

## **Expenditures**

Following review of expenses dated March 7, 2023, for funds and amounts as follows, Mr. Abram moved, Mrs. Schnabel seconded, to approve the expenditures of February 17, 2023 through March 2, 2023:

Water Fund 701	\$	280,740.99
Wastewater Fund 721	\$	206,213.18
ETL1 Fund 703	\$	1,116.00
ETL2 Fund 762	\$	1,116.00
LORCO Fund 749	\$	7,126.47
Water Construction Fund 704	\$	23,618.80
Wastewater Construction Fund 724	\$	865.38

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

## **Cell Tower Lease Amendment**

Mr. Munro stated that in 2010 the Board of Municipal Utilities entered into a land lease agreement with Verizon Wireless for 10,000 sq. ft. of land on the Water Reclamation Facility property to construct a cell phone tower. Verizon has requested an extension of that lease. The first lease amendment is a 30-year extension, with a \$25,000.00 up front payment and a continuation of all other terms of the original agreement. Mr. Munro said he reviewed the amendment with Law Director Ebert and no issues were found. Staff recommends the approval of the amendment.

After Board discussion, Mr. Abram moved and Mr. Rickey seconded, to authorize the CUE to execute the first amendment to the land lease agreement with Verizon Wireless as presented.

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

## **Concrete Bid**

Mr. Munro said that bids were opened on February 17, 2023 for the supply and delivery of various concrete mixes for the 2023 season. Terminal Ready Mix, Inc. of Lorain, OH was the low bidder. The concrete will be used for the additional storage building and repairs throughout the city. Mr. Rickey inquired about the stated quantities. Mr. Munro explained that the quantities are estimated numbers and that staff can order more, less, or none. Mr. Rush asked why one specific line item was crossed off and not bid. Mr. Munro explained that this was a very specific mix that was only used for the footers of the additional storage building. It was not going to be needed this year.

With no further discussion, Mrs. Schnabel moved, and Mr. Rickey seconded to authorize the CUE to execute a contract with Terminal Ready Mix, Inc. per the Certified Engineers Bid Tabulation.

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

## ***Project Updates***

Power Plant Update: Mr. Yuronich informed the Board that the previous Ohio Environmental Protection Agency, Northeast Office District Chief, Kurt Princic has left that position. Mr. David Emerman has filled that vacancy. Mr. Yuronich had a Zoom call to make introductions that went very well. Mr. Emerman expressed interest in touring ALRW's Water Filtration Plant along with requesting a tour of the power plant facility. These tours are being set up for the first or second week of May 2023. Mr. Dzwonczyk questioned if there was a misspelling of the District Chief's name and Mr. Yuronich informed him of a typographical error.

ETL Design Services: No update.

WFP Improvements: No update.

2022 Water Line Bundle Project: No update.

Additional Storage Building: Mr. Yuronich stated that Kendera had been called to perform some unplanned emergency work and there would be a delay in getting started on the demising wall. ALRW staff has completed the covering of wash bay door openings with Visqueen. Mr. Yuronich stated the Engineering has been working to get the internal utility work on this building out to bid. Mr. Dzwonczyk asked Mr. Yuronich to inform the audience what the purpose of a demising wall was and Mr. Yuronich informed him that it was to create a barrier between the wash bay and the rest of the building.

## ***CUE Report***

Mr. Munro informed the Board that the bid for electrical, HVAC and fire suppression system for the additional storage building will be going out this week. The electrical engineer provided the loading calculations for the electric service and those have been submitted to First Energy. First Energy issued the permit fee invoice to staff and informed them that once payment is received it would be approximately 12 weeks to install the service.

Mr. Munro provided an update on meter replacements. He stated that 430 meters did not read during the last meter reading. This indicates that the batteries are dying and are due for replacement. Based on the serial numbers the meters that are failing are about 12 to 13 years old. Mr. Dzwonczyk asked if we had a tracking system in place and stock to replace these. Mr. Munro said that our supplier ordered a pallet of meter heads to allow us to purchase these as needed. Mr. Rickey inquired how we estimate the reads for services where the heads have failed. Mr. Munro stated that these can be read manually by going to the meter vault and recording the reading from the meter register. The meter itself is still working, it just doesn't have the battery power to transmit the read as employees drive by.

## ***Miscellaneous & Member Reports***

Mr. Dzwonczyk reported that he and Mr. Rush had lunch with a gentleman who is interested in joining the Board should there be an opening in the future.

## ***Public Speakers***

None.

## ***Executive Session***

Mr. Rush moved, Mr. Abram seconded, to meet in executive session as allowed by ORC §121.22 (G) (2) and (G)(3) to discuss pending legal matters and to include the CUE, the CUO, and a representative from Mansour Gavin.

Ayes (per roll-call vote): Abram, Dzwonczyk, Rickey, Rush, and Schnabel

Nays: None

Motion carried.

The Board entered Executive Session at 7:04 PM

The Board reconvened at 8:04 PM.

### ***Charter Amendment***

Mr. Abram stated that based on his previous Memo to Board Members, the Board decided that only the proposed Charter Amendment to Section 47 concerning Removal should be presented to the Charter Review Commission. Mr. Munro said that any proposed Utility Amendments would need to be submitted to the Commission at the March 22, 2023 meeting.

### ***Adjourn***

As there was no further business, Mr. Abram moved to adjourn, and Mr. Rush seconded. The meeting adjourned at 8:10 PM.

Ayes (per voice vote): Abram, Dzwonczyk, Rickey, Rush, Schnabel

Nays: None

Motion carried.

Approved March 21, 2023.

John Dzwonczyk, Chairman

Robert Munro, Clerk

## THE FIRST AMENDMENT TO LAND LEASE AGREEMENT

This First Amendment to Land Lease Agreement (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **The City of Avon Lake, an Ohio municipal corporation by and through The Board of Municipal Utilities, ("Landlord")** and **Cellco Partnership d/b/a Verizon Wireless ("Tenant")** (Landlord and Tenant being collectively referred to herein as the "**Parties**").

### RECITALS

**WHEREAS**, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

**WHEREAS**, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Land Lease Agreement dated October 6, 2010 (as the same may have been amended, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

**WHEREAS**, Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein; and

**WHEREAS**, Tenant has granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA; and

**WHEREAS**, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of **Twenty-Five Thousand and 00/100 Dollars (\$25,000.00)**, payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before May 8, 2023; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
- 2. Lease Term Extended.** Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on August 1, 2011 and, without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "**Existing Renewal Term**" and, collectively, the "**Existing Renewal Terms**"), the Lease is otherwise scheduled to expire on . In addition to any Existing Renewal Term(s), the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of six (6) additional five (5) year renewal terms (each a "**New Renewal Term**" and, collectively, the "**New Renewal Terms**"). Notwithstanding anything to the contrary contained in the Lease, as modified by this Amendment,

(a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate the Lease only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary (beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "**Renewal Term**" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** The Parties hereby acknowledge and agree that all applicable increases and escalations to the rental payments under the Lease (the "**Rent**") shall continue in full force and effect through the New Renewal Term(s). In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid to Landlord under the Lease shall be paid to **The City of Avon Lake OH** by Tenant.
4. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. In the event there is a conflict between the Lease and this Amendment, this Amendment shall control. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, including subleasing to American Tower, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses and confirmation that no additional consideration is owed to Landlord for such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in the Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense and for no additional consideration to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
5. **Non-Compete.** During the original term, any Existing Renewal Terms, and/or any New Renewal Terms of the Lease, as modified by this Amendment, Landlord shall not sell, transfer, grant, convey, lease, and/or license by deed, easement, lease, license or other legal instrument, an interest in and to, or the right to use or occupy any portion of the Parent Parcel or Landlord's contiguous, adjacent, adjoining or

ATC Site No: 416716

VZW Site No: 189699

Site Name: AVON LAKE POWER OH

surrounding property to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "**Third Party Competitor**") without the prior written consent of Tenant, which may be withheld, conditioned, and/or delayed in Tenant's sole, reasonable discretion.

6. **Limited Right of First Refusal.** The Parties acknowledge and agree that Section 16 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant's right of first refusal shall be controlled by this Section of this Amendment. Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor or to American Tower. If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to a Third Party Competitor or (ii) assign all or any portion of Landlord's interest in the Lease to a Third Party Competitor (any such offer, the "**Offer**"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment. For the avoidance of doubt, American Tower, its affiliates and subsidiaries, shall not be considered a Third Party Competitor and this provision shall not apply to future transactions with American Tower, its affiliates and subsidiaries.
  
7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; (vi) so long as Tenant performs its obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises, and Landlord shall not act or permit any third person to act in any manner which would interfere with or disrupt Tenant's business or frustrate Tenant or Tenant's customers' use of the Leased Premises and (vii) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs,

ATC Site No: 416716

VZW Site No: 189699

Site Name: AVON LAKE POWER OH

fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.

8. **Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant or American Tower in connection therewith shall be and remain confidential. Except with Landlord's family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.
9. **Notices.** The Parties acknowledge and agree that Section 23 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: 201 MILLER RD, AVON LAKE, OH 44012; to Tenant at: Verizon Wireless, Attn.: Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; with copy to: American Tower, Attn.: Land Management, 10 Presidential Way, Woburn, MA 01801; and also with copy to: Attn.: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
11. **Governing Law.** The Parties acknowledge and agree that Section 21 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date and notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
12. **Waiver.** Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
13. **Tenant's Securitization Rights; Estoppel.** Landlord hereby consents to the granting by Tenant and/or American Tower of one or more leasehold mortgages, collateral assignments, liens, and/or other security

interests (collectively, a "**Security Interest**") in Tenant's (or American Tower's) interest in the Lease, as amended, and all of Tenant's (or American Tower's) property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's (or American Tower's) mortgagee ("**Tenant's Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "**Holder**") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant and/or American Tower hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant, American Tower or Holder.

14. **Taxes.** The Parties acknowledge and agree that Section 7(a) of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to taxes shall be controlled by this Section of this Amendment. During the term of the Lease, as modified by this Amendment, Tenant shall pay when due all real property, personal property, and other taxes, fees, and assessments that are directly attributable to Tenant's improvements on the Leased Premises (the "**Applicable Taxes**") directly to the local taxing authority to the extent that the Applicable Taxes are billed directly to Tenant. Tenant hereby agrees to reimburse Landlord for any Applicable Taxes billed directly to Landlord (which shall not include any taxes or other assessments attributable to periods prior to the Effective Date). Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of any Applicable Taxes along with proof of payment of the same by Landlord. Landlord shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Anything to the contrary notwithstanding, Landlord is only eligible for reimbursement if Landlord requests reimbursement within one (1) year after the date such taxes became due. Additionally, Landlord shall not be entitled to reimbursement for any costs associated with an increase in the value of Landlord's real property calculated based on any monetary consideration paid from Tenant to Landlord. If Landlord fails to pay when due any real property, personal property, and other taxes, fees, and assessments affecting the Parent Parcel, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.

15. **Conflict/Capitalized Terms.** The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any capitalized terms in this Amendment and the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease, the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

**LANDLORD:**

**The City of Avon Lake, an Ohio municipal corporation by and through The Board of Municipal Utilities,**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT:**

**Cellco Partnership d/b/a Verizon Wireless**

By: ATC Sequoia LLC, a Delaware limited liability company

Title: Attorney-in-Fact

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

*This Exhibit A may be replaced at Tenant's option as described below.*

### **PARENT PARCEL**

*Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.*

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below:

This is a description for New Par, dba Verizon Wireless, of a 0.230 acre Land Space, all out of Lots 361, 362, and 363 of the "Avon Lake Harbor Estates Subdivision", recorded in Plat Map Volume 12, Page 24. Said Lots being owned by THE CITY OF AVON LAKE, of record in Deed Volume 677, Page 932, all references to records being on file in the Office of the Recorder, Lorain County, Ohio.

Situate in the State of Ohio, County of Lorain, City of Avon Lake, Original Avon Township Section No. 6, and being a 0.230 acre Land Space, all out of Lots 361, 362, and 363 of the "Avon Lake Harbor Estates Subdivision", recorded in Plat Map Volume 12, Page 24. Said Lots being owned by THE CITY OF AVON LAKE, of record in Deed Volume 677, Page 932, said 0.230 acre Land Space being more particularly described as follows:

The **True Place of Beginning** of the herein described 0.230 acre Land Space being an iron pin found at the intersection of the south Right of Way line of Durrell Avenue (50' wide), with the east Right of Way of Waterbury Avenue (50' wide), and being referenced by iron pins found on the east Right of Way line of said Waterbury Ave. which bear South 00°33'18" East, at a distance of 45.00 feet and being the southwest corner of said Lot 363, at a distance of 85.00 feet and being the southwest corner of said Lot 362, and at a distance of 125.00 feet and being the southwest corner of said Lot 361;

Thence from said **True Place of Beginning** South 89°58'18" East, along the south Right of Way line of said Durrell Ave., a distance of 100.01 feet to an iron pin set;

Thence South 00°33'18" East, along a line being parallel with, and 100.00 feet easterly of the east Right of Way line of said Waterbury Ave., a distance of 100.01 feet to an iron pin set;

Thence North 89°58'18" West, along a line being parallel with, and 100.00 feet southerly of the south Right of Way line of said Durrell Ave., a distance of 100.01 feet to an iron pin set in the east Right of Way line of said Waterbury Ave.;

Thence North 00°33'18" West, along easterly of the east Right of Way line of said Waterbury Ave., a distance of 100.01 feet to the True Place of Beginning, containing 0.230 acre (10,000 square feet).

### **LEASED PREMISES**

*Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.*

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

### **ACCESS AND UTILITIES**

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

ATC Site No: 416716  
VZW Site No: 189699  
Site Name: AVON LAKE POWER OH

## **EXHIBIT B**

# **FORM OF MEMORANDUM OF LEASE**

**Prepared by and Return to:**

American Tower  
10 Presidential Way  
Woburn, MA 01801

Attn: Land Management/Danielle Dipersia, Esq.  
ATC Site No: 416716  
ATC Site Name: AVON LAKE POWER OH  
Assessor's Parcel No(s): 05-034-020-00

**Prior Recorded Lease Reference:**  
No Prior Recording Reference  
State of Ohio  
County of Lorain

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**MEMORANDUM OF LEASE**

This Memorandum of Lease (the "**Memorandum**") is entered into as of the latter signature date hereof, by and between **The City of Avon Lake, an Ohio municipal corporation by and through The Board of Municipal Utilities**, a ("**Landlord**") and **Cellco Partnership d/b/a Verizon Wireless** ("**Tenant**").

**NOTICE** is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** Landlord is the owner of certain real property being described in **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Land Lease Agreement dated October 6, 2010 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **American Tower.** Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein. In connection with these responsibilities, Tenant has also granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA.
3. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be July 31, 2071. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
4. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on **Exhibit A** with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such

ATC Site No: 416716  
VZW Site No: 189699  
Site Name: AVON LAKE POWER OH

replacement, including, without limitation, amendments to this Memorandum and to the Lease.

5. **Right of First Refusal.** There is a right of first refusal in the Lease.
6. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
7. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: 201 MILLER RD, AVON LAKE, OH 44012; to Tenant at: Verizon Wireless, Attn.: Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; with copy to: American Tower, Attn.: Land Management, 10 Presidential Way, Woburn, MA 01801, and also with copy to: Attn.: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
8. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
9. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

**LANDLORD**

**2 WITNESSES**

**The City of Avon Lake, an Ohio municipal corporation by and through The Board of Municipal Utilities,**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT**

**WITNESS**

**Cellco Partnership d/b/a Verizon Wireless**

By: ATC Sequoia LLC,  
a Delaware limited liability company  
Title: Attorney-in-Fact

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

Commonwealth of Massachusetts

County of Middlesex

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

## **EXHIBIT A**

*This Exhibit A may be replaced at Tenant's option as described below.*

### **PARENT PARCEL**

*Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.*

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below:

This is a description for New Par, dba Verizon Wireless, of a 0.230 acre Land Space, all out of Lots 361, 362, and 363 of the "Avon Lake Harbor Estates Subdivision", recorded in Plat Map Volume 12, Page 24. Said Lots being owned by THE CITY OF AVON LAKE, of record in Deed Volume 677, Page 932, all references to records being on file in the Office of the Recorder, Lorain County, Ohio.

Situate in the State of Ohio, County of Lorain, City of Avon Lake, Original Avon Township Section No. 6, and being a 0.230 acre Land Space, all out of Lots 361, 362, and 363 of the "Avon Lake Harbor Estates Subdivision", recorded in Plat Map Volume 12, Page 24. Said Lots being owned by THE CITY OF AVON LAKE, of record in Deed Volume 677, Page 932, said 0.230 acre Land Space being more particularly described as follows:

The True Place of Beginning of the herein described 0.230 acre Land Space being an iron pin found at the intersection of the south Right of Way line of Durrell Avenue (50' wide), with the east Right of Way of Waterbury Avenue (50' wide), and being referenced by iron pins found on the east Right of Way line of said Waterbury Ave. which bear South 00°33'18" East, at a distance of 45.00 feet and being the southwest corner of said Lot 363, at a distance of 85.00 feet and being the southwest corner of said Lot 362, and at a distance of 125.00 feet and being the southwest corner of said Lot 361;

Thence from said True Place of Beginning South 89°58'18" East, along the south Right of Way line of said Durrell Ave., a distance of 100.01 feet to an iron pin set,

Thence South 00°33'18" East, along a line being parallel with, and 100.00 feet easterly of the east Right of Way line of said Waterbury Ave, a distance of 100.01 feet to an iron pin set,

Thence North 89°58'18" West, along a line being parallel with, and 100.00 feet southerly of the south Right of Way line of said Durrell Ave., a distance of 100.01 feet to an iron pin set in the east Right of Way line of said Waterbury Ave.;

Thence North 00°33'18" West, along easterly of the east Right of Way line of said Waterbury Ave., a distance of 100.01 feet to the True Place of Beginning, containing 0.230 acre (10,000 square feet).

### **LEASED PREMISES**

*Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.*

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

### **ACCESS AND UTILITIES**

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

ATC Site No: 416716  
VZW Site No: 189699  
Site Name: AVON LAKE POWER OH

**Avon Lake Regional Water  
Concrete & Construction Materials (2023)  
Bid Opening February 17, 2023 12:00 PM EST**

Item No.	Approx. Qty.	Description	Unit of Measure	Westview Concrete	Terminal Ready Mix, Inc.	difference
1A	978	Concrete, 4000 psi, (Exterior) Air-Entrained, Blend Stone, Full Air (Outside parking lot/driveway)	Cu. Yd.	\$ 144.50	\$ 131.00	\$ 13.50
1B	978	Concrete, 4000 psi, Class C (Exterior) High-Early, 3-Day Set, Air-Entrained, Blend Stone, Full Air (Outside parking lot/driveway)	Cu. Yd.	\$ 150.50	\$ 137.00	\$ 13.50
1C	978	Concrete, MS 800, 5000 psi, (Exterior) 3-Day Set, Air-Entrained, Blend Stone, Full Air (Outside parking lot/driveway)	Cu. Yd.	\$ 162.00	\$ 151.00	\$ 11.00
1D	978	Concrete, FS 900, 5000 psi, (Exterior) 1-Day Set, Air-Entrained, Blend Stone, Full Air (Outside parking lot/driveway)	Cu. Yd.	\$ 174.00	\$ 160.00	\$ 14.00
<del>1E</del>	<del>280</del>	<del>Concrete, 4000 psi, (Interior SOG) Non Air-Entrained, Blend Stone For Storage Building</del>	<del>Cu. Yd.</del>			
1F	20	Grout, Fine, Seven (7) Sack	Cu. Yd.	\$ 152.50	\$ 145.00	\$ 7.50
5	125	Concrete Weatherproofing Sealant, Diamond Clear 350	Gal.	\$ 38.00	\$ 37.00	\$ 1.00

Addendum 1  Yes  Yes

Bid Bond  Yes  Yes

Errors?  None  None

Jack R. Gaydar  
P.S., P.E., M.ASCE  
02/17/23