



The City of
WORCESTER

Administration & Finance – Purchasing Division
Christopher J. Gagliastro, MCPPO – Purchasing Director
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purchasing@worcesterma.gov

January 13, 2023

To All Bidders:

Subject: **Bid No. CR-7948-W3, Property Lease – Chester Street Water Tank / DPWP**

ADDENDUM NO. 1

To Whom It May Concern:

With reference to our bid request relative to the above subject, please refer to the changes/modifications/clarifications to the original proposal request.

- ***PLEASE SEE ATTACHED SAMPLE CITY LEASE AGREEMENT***

Bidders are requested to acknowledge and/or include this addendum with submission. All other terms, conditions and specifications remain unchanged.

Very truly yours,

Christopher J. Gagliastro
Purchasing Director

LEASE AGREEMENT

This Lease Agreement ("Lease") made and entered into this _____. 2023, by and between [] (hereinafter "Lessee"), and the City of Worcester, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts ("City"), acting through its Department of Public Works and Parks ("Department") (City and Department hereinafter also collectively referred to as "Lessor").

WITNESSETH

WHEREAS, the City, acting through its Purchasing Department, invited sealed proposals for the lease of property located at 175 Chester Street, Worcester ("Property") and the water tank located thereon, known as the Chester Street Water Tank (hereinafter "Premises") for the placement and operation of telecommunications equipment thereon; and,

WHEREAS, the Lessee submitted a proposal which was acceptable to the Lessor; and,

WHEREAS, the Lessor and Lessee have agreed upon the terms, conditions and covenants wherein and whereby the said Lessee will lease the Premises;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, it is mutually agreed as follows:

1. The Lessor, in consideration of the rents to be paid and the covenants and agreements to be performed by Lessee hereunder, does hereby demise and lease unto Lessee, and Lessee hereby leases from Lessor the non-exclusive right to occupy, enter upon, re-enter, to install, operate, maintain, replace, and remove telecommunications equipment upon the Premises and its appurtenant land, located at 175 Chester Street, and situated on the westerly side of Chester Street, as more fully described in Exhibit "A" attached hereto and made part hereof, all in accordance with the requirements and specifications as set forth in Bid No. [] and Lessee's proposal submitted in response thereto, dated [] (hereinafter, collectively, "Bid Documents"). In the event of a conflict between the terms of this Lease and the Bid Documents, the terms of this Lease shall control.

2. Term. The initial term of this Lease shall be for a period of five (5) years, commencing on _____ ("Commencement Date") and terminating on _____.

(A) Renewal. The Term may be renewed for three (3) successive terms of five (5) years each, upon mutual agreement by both parties ("Renewal Term"). The Lessee shall provide the Lessor with written notice of its intention to exercise a renewal option or terminate the Lease within thirty (30) days prior to the expiration of the

then existing Term.

(B) Termination. At the termination of this Lease, either by non-renewal of the Term or in the event of termination pursuant to this Lease, the Lessee shall remove the telecommunications equipment, including the antennas and all associated apparatus on the Premises and appurtenant land on the Property, and return the Premises, and applicable portion of the Property, to its original condition within sixty (60) days of termination or expiration.

3. Rent. The rent payable by Lessee to Lessor during the initial Term shall be as follows:

Year 1:	/month
Year 2:	/ month
Year 3:	/month
Year 4:	/month
Year 5:	/ month

(A) Renewal Term. During each and every Renewal Term, if any such options are exercised, the rental fee shall be increased four (4) percent per annum.

(B) Monthly payments shall be made on or before the first of each month by check made payable to "City of Worcester" and forwarded to the attention of Commissioner, Department of Public Works & Parks, 20 East Worcester Street, Worcester, MA 01604.

(C) **Interest.** In addition to the Lessor's remedies hereunder, any payments of rent, due under this Lease not paid within ten (10) days of the date due shall bear interest at the rate of twelve percent (12%) per annum from the original due date until paid.

4. The Lessee shall use the Premises, and appurtenant land, solely for the transmission and reception of communications signals by wireless means and construction, alteration, maintenance, repair and relocation of antennas, equipment, cable structures, facilities and improvements related thereto. In no instance shall the Lessee use the Premises for any purpose not related to the allowed use.

5. Lessee's use of the Premises shall comply with all applicable federal, state, and local laws and regulations including the Worcester Zoning Ordinance requirements related to a telecommunication facility located on an existing water tank.

6. (A) Prior to any installation or construction, the Lessee must provide the Department with a drawing and description of the Premises indicating where the Lessee intends to install its equipment, wires, antennas, utility service, and any other apparatus ("Site Plan"). The Department shall have aesthetic control over the proposed Site Plan and shall approve any such plans and specifications prior to the Lessee's submittal of an application to the Worcester Zoning Board of Appeals

or any other local board or commission, as required. The Lessee shall not attach more than nine (9) antennas to the Premises.

(B) Prior to installation or construction, the Lessee shall secure all necessary and pertinent federal, state and local permits and any other approvals required for the construction, use(s) and operation of the antennas and all appurtenances thereto, including, but not limited to the Federal Communications Commission, the City of Worcester, and any other relevant federal, state and local authorities.

(C) The Lessee must obtain the Department's approval prior to the initial installation of any equipment on the Premises and appurtenant land. Said approval shall not be unreasonably withheld by the City. Following the initial installation, Lessee shall notify Lessor at least twenty-four (24) hours in advance requesting access to the Property and Premises. Access shall not be unreasonably withheld by the City and to the extent possible and practical the City shall provide said access within a reasonable timeframe of the request. Lessee shall not enter upon the Property or the Premises without the consent and approval of Lessor. Any unauthorized entry upon the Property shall be considered a trespass and a breach of this Lease.

(D) Lessee's access to the Premises for installation, repairs, maintenance, and modifications shall conform to the Department's security policies, procedures and guidelines, on file at the Department of Public Works & Parks.

(E) Connecting systems shall not disturb the tank surface. Within thirty (30) days of written notice from the City, Lessee shall repair, and re-coat per AWWA Standards, any damages to the tank surface, railing, and associated structures that result from antenna installation(s). The repair shall be subject to the Department's approval.

(F) Any damage to the Property, including the tank and the appurtenant land, that occurs as a consequence of the Lessee's use of the Premises shall be repaired by the Lessee, subject to the City's approval.

(G) Lessee shall install all telecommunications equipment and related apparatus in a manner so as not to interfere with the municipal operations or use at the Property, including but not limited to, the City's access to the water tank, use of railings, walkways or ladders attached to the Premises.

7. Lessee shall be responsible for all utility costs (electric, gas, etc.) for the antennas and associated apparatus and shall pay all costs associated with installation, maintenance and insurance of equipment and employees or contractors during construction and throughout the duration of the Lease.

8. Lessee's use of the Premises shall not cause Measurable Interference, as defined by the Federal Communications Commission, to any

existing or future communications equipment of the City, residents of the City of Worcester, and/or other telecommunications lessees with equipment on the Premises.

(A) If Lessee's equipment causes a Measurable Interference and said interference cannot be eliminated within seventy two (72) hours of notice from Lessor, Lessee shall shut down its equipment and correct and eliminate such interference within thirty (30) days of receipt of written notice from the City. The Lessee bears the burden of demonstrating that any alleged interference is not caused by the Lessee's equipment or use of the Premises.

9. The Premises is under the direct care, custody and control of the commissioner of the city of Worcester's department of public works and parks, whose decision shall be final relative to all issues regarding use and access to the Premises, including but not limited to: security, guidelines, procedures, municipal operations, and the provisions set forth in paragraphs 4-8 above. The City's activities and uses at the Premises have priority over the Lessee's access rights.

10. Upon thirty days (30) written notice to the Lessee from the City, Lessee shall temporarily remove, as necessary, any equipment that might interfere with the inspection, cleaning and/or painting of the water tank. Said equipment may be re-installed when authorized by the Department. Notwithstanding anything herein to the contrary, Lessee, with the prior written approval of Lessor, which approval shall not be unreasonably withheld, may bring a cell-on-wheels or other temporary communications facility onto the Premises to maintain continuous operations during the period of such temporary removal of Lessee's equipment.

11. Termination. (A) Termination for Cause. The Lessor reserves the right to terminate the Lease for cause, including, but not limited to, failure by the Lessee to fulfill its obligations pursuant to this Lease or any applicable law, rule, regulation or required permit.

(B) The Lessee may terminate the Lease, without penalty or further obligation, (1) if Lessee is unable, after due diligence, to obtain or maintain (or decides in its sole discretion that it is unlikely to obtain or maintain without undue cost or time); any license, permit or other governmental approval necessary to the construction and/or operation of the equipment on the Premises; (2) if the Premises or equipment are destroyed or damaged and rendered unsuitable for normal use as related to the stated purpose of this Lease; or (3) if Lessee determines that any of the equipment cannot be used without a Measurable Interference, as defined herein, to other occupants of the Premises.

(C) Notwithstanding anything to the contrary in subsection (B), above, if written notice of termination is delivered to the Lessor on or after the fifteenth (15th) day of the month, the Lessee shall be obligated to pay the Lessor the entire rental amount for the next ensuing month.

12. Lessee shall indemnify and hold harmless the Lessor and its officers, employees and agents from and against any and all asserted claims and liabilities of every kind and nature whatsoever, arising during the term of this Lease and any renewal or extension hereof, or during such, further time as Lessee's facilities are located on the Premises, out of or in any way relating to the construction, installation, operation or maintenance, updating and reconstruction of the Lessee's telecommunications facilities, including without limitation by reason of enumeration, those for bodily injury (including death), property damage, those arising from any breach, or default on the part of the Lessee in the performance or observance of any agreement on its part to be performed or observed pursuant to the terms of this Lease, or from any act or omission of Lessee or any of its agents, contractors, or employees, and any and all actions, suits, proceedings, claims, demands, judgments, assessments, costs, liabilities and expenses, including without limitation by reasons of enumeration attorney's fees incident to any item to which the foregoing indemnity of the Lessor relates. The indemnification required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this Lease. Lessor shall not be required to indemnify Lessee.

13. The Lessee shall procure and maintain at all times during the term(s) of this Lease, bodily injury and property insurance with a combined single limit of at least Five Million Dollars (\$5,000,000.00) per occurrence insuring both the Lessee and the Lessor with regard to all claims, injuries or damages associated with the Lessee's use of the Premises. Prior to entry onto the Premises, or installation of any telecommunications equipment thereof, the Lessee shall furnish proof of such insurance coverage, which shall name the City of Worcester as an additional insured and contain a provision that written notice of cancellation or material change in the insurance policy will be delivered to the Lessor thirty (30) days in advance of the effective date thereof.

The Certificate Holder shall be identified as: Commissioner, Department of Public Works & Parks, 20 East Street, Worcester, MA 01608.

14. Any formal notices necessary under this Lease shall be given by certified mail, return receipt requested, and addressed to the City at:

City Manager
Room 306, City Hall
Worcester, Massachusetts
01608

With a copy to:

Commissioner
Department of Public Works & Parks
20 East Street
Worcester, Massachusetts 01604

to Lessee at:

[]

15. Except as set forth in in this paragraph, Lessee may not assign, or otherwise transfer all or any part of its interest in the Lease or in the Premises without prior written approval from the Lessor.

(A) The Lessee may assign this Lease and all rights granted to Lessee hereunder to, (1) an affiliate ("Affiliate"), or (2) any entity which is merged or consolidated with Lessee or purchases a majority or controlling percentage ("Controlling Percentage") in the ownership or assets of Lessee or with which Lessee effectuates a change in control ("Change in Control") (collectively, the "Permitted Parties").

(B) As used herein, Affiliate shall mean an entity which controls, is controlled by, or which is under common control with Lessee. Change in Control shall mean, any dissolution, merger, consolidation or reorganization of Lessee, or the aggregate sale or other transfer of a controlling percentage of the capital stock of Lessee, or the sale during the Term or any Renewal Term of this Lease in the aggregate of fifty-one percent (51%) or more of the value of the assets of Lessee. The phrase Controlling Percentage shall mean the ownership of, and the right to vote, stock possessing fifty-one percent (51%) or more of the total combined voting power of all classes of Lessee's capital stock issued, outstanding and entitled to vote for the election of directors.

16. The Lessor reserves the right to enter into additional non-exclusive leases, licenses, or agreements, pertaining to the Premises, provided however that any additional telecommunications provider or entity shall locate and operate its telecommunications equipment without physical or operational interference with Lessee's installations.

17. This Lease contains all of the agreements between Lessor and Lessee with respect to the subject matter of this Lease and supersedes any prior agreement, writings and dealings between them with respect to this Lease.

18. None of the provisions or terms of this Lease shall be deleted, amended, or modified in any manner except by a written instrument signed, and mutually agreed upon by all parties to this Lease.

19. This Lease shall bind and inure to the benefits of the parties to this Lease and to their respective representatives, successors, and assigns.

20. This Lease Agreement, RFP # [] , and all incorporated exhibits, shall be construed and governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principals. Lessor and Lessee agree to bring any

Federal or State legal proceedings arising under this Lease, in a court of competent jurisdiction within the Commonwealth of Massachusetts.

21. Waiver. The failure of either party to seek redress for violation or to insist upon the strict performance of any covenant or condition of this Lease shall not prevent a subsequent act that would have originally constituted a violation, from having all the force and effect of a violation. No provision of this Lease shall be deemed to have been waived by any party unless such waiver is in writing and signed by an authorized representative of the party to be bound by such waiver.

22. The titles and headings of the paragraphs contained herein are for convenience in reference only, and are not intended to define, extend, or limit the scope of any provisions of the Lease.

23. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall be declared invalid, or unenforceable in a final arbitration or judicial award, the remaining terms, covenants, conditions and provisions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties.

24. This Lease may be executed in counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself.

25. Nothing contained in this Lease shall constitute or be construed to be or create a partnership or joint venture between the City and the Lessee.

[signature page to follow]

IN WITNESS WHEREOF, the **LESSOR and LESSEE** have hereunto set their hands and seals as of this _____ of _____, 2023.

LESSOR
CITY OF WORCESTER

LESSEE

RECOMMENDED BY:
Department of Public Works & Parks

Jay J. Fink, P.E.
Commissioner

By:
Title:

Christopher J. Gagliastro
Purchasing Director

Approved as to legal form:

Approved:

Alexandra H. Kalkounis
Deputy City Solicitor

Eric D. Batista
City Manager

[Exhibits]

Exhibit A – Property

SAMPLE

Premise

Notice of Lease

SAMPLE