

RESOLUTION NO. 04-10

THE BRICK TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

January 25, 2010

**A Resolution Awarding Contract No. TLC-2009-Mantoloking Road for
the Mantoloking Road Water Storage Tank Telecommunications Lease
to MetroPCS New York, LLC**

WHEREAS, The Brick Township Municipal Utilities Authority ("Authority"), pursuant to the New Jersey Local Public Contracts Law, N.J.S.A. 40A:11-1 *et seq.*, and Local Lands and Buildings Law, N.J.S.A. 40A:12-1 *et seq.*, solicited bids leasing space for the installation of telecommunications equipment on and adjacent to the Mantoloking Road Water Storage Tank ("Project"); and

WHEREAS, on October 6, 2009 a single bid was submitted by MetroPCS New York, LLC which was deemed non-responsive and subsequently rejected pursuant to Resolution No. 79-09; and

WHEREAS, bids were again solicited and on December 8, 2009 a single bid was received from MetroPCS New York, LLC providing for an annual lease payment of \$42,000.00 for the first year of the lease with subsequent year lease payments increasing in accordance with the bid specifications; and

WHEREAS, the MetroPCS New York, LLC bid proposed an alternate location for placement of the ground equipment which Stephen T. Specht, P.E., the Authority's Deputy Executive Director and Director of Engineering/Operations, has reviewed and recommends be relocated ten (10) feet in a southerly direction to provide sufficient space for tank maintenance operations and eliminate potential conflict with the existing equipment and cables of other telecommunication lessees; and

WHEREAS, the bid included a proposed lease modification conditioning the proposal on MetroPCS New York, LLC executing an agreement with Omnipoint Facilities Network 2 due to the proximity of the proposed ground equipment location and cables to those of Omnipoint, a concern which is eliminated with the recommendation to relocate the lease area ten (10) feet referenced above; and

WHEREAS, the bid also included several additional proposed lease modifications which have been reviewed by the Authority's Deputy Executive Director and Director of Engineering/Operations with the Authority's Legal Counsel Jerry J. Dasti, Esq., who has determined the proposed lease modifications represent neither a substantial or material change with both recommending the award of this contract to MetroPCS New York, LLC subject to the condition outlined above.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE BRICK TOWNSHIP MUNICIPAL UTILITIES AUTHORITY as follows:

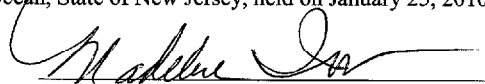
1. The Authority hereby awards the bid for this Project to MetroPCS New York, LLC, providing a first year annual lease payment in the amount of \$42,000.00 subject to all conditions outlined in the Notice to Bidders, Specifications and Contract Documents and further subject to the relocation of the existing perimeter fence and relocating the proposed 10' x 20' ground equipment area a distance ten (10) feet south.
2. This contract award is not subject to MetroPCS New York, LLC executing an agreement with Omnipoint Facilities Network 2.
3. The following changes to the Lease Agreement are hereby authorized:
 - a. Replace the existing Section 1.0 "Lease" with the following:

"Owner agrees to lease to Lessee space to install telecommunications equipment, including necessary connecting cables, on or atop the water storage tank, together with a 10' x 20' ground level area for the placement of equipment cabinets/structure with gross floor area of no more than 100 square feet (200 square feet with proper zoning approvals from Brick Township), hereinafter referred to as the "Premises" which is shown as **Exhibit 2**, attached hereto and made part of this Lease, all adjacent to the existing Omnipoint (T-Mobile) & Cingular Wireless (AT&T) equipment."

- b. Add the following sentence at the end of Section 2.0 "Use of Premises" subsection (a):
"In the event any of those test(s) or survey(s) reveal(s) any conditions that would adversely affect or significantly limit Lessee's intended use of the Premises, Lessee shall have the right to terminate the Agreement, without further liability, upon thirty (30) days notice."
- c. Replace the third sentence of Section 4.0 entitled "Term" with the following:
"This Agreement shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease Agreement at least thirty (30) days prior to the expiration of the Term or any Renewal Term."
- d. Replace the last sentence of subsection (c) of Section 9.0 entitled "Interference" with the following:
"Should the interference continue, it shall, as the Lessee's option, be deemed a breach by the Owner if not corrected within sixty (60) days upon written notice from Lessee, which will be extended an additional thirty (30) days if the Owner is making a good faith effort to correct the interference."
- e. Add the following sentences at the end of the first sentence of Section 10.0 entitled "Insurance":
"Lessee shall satisfy such insurance requirements through a combination of primary and umbrella policies. Owner shall procure and maintain commercial general liability in commercially reasonable amounts."
- f. Add "Waiver of Lien" to the title of Section 12.0 "Right to Lease and Warranty of Title" and add the following provision at the end of the section:
"Owner acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Lessee's equipment (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Owner (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's equipment; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory landlord's lien; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings."
- g. Replace subsection (c) of Section 13.0 entitled "Termination" with:
"Environmental, structural, economic and technological reasons, including but not limited to signal strength or interference."
- h. Replace the "ten (10) days" reference in Section 15.0 entitled "Default" with "thirty (30) days."
- i. Add the following sentence at the end of Section 16.0 entitled "Maintenance and Repair":
"In the event the repair work is expected to take longer than three (3) days, Lessee shall be entitled to install temporary receiving and transmitting equipment to be installed in a location to be mutually agreed by the parties."
4. The Chairman, Secretary and Executive Director of the Authority are hereby authorized to execute any and all necessary documents to implement the intent of this resolution.

CERTIFICATION

I certify that the foregoing Resolution was duly adopted at a Regular Meeting of The Brick Township Municipal Utilities Authority, County of Ocean, State of New Jersey, held on January 25, 2010.



Madeline Iannarone
Asst. Secretary/Treasurer