

**RESOLUTION NUMBER: 23-078**

**RESOLUTION OF PASSAIC VALLEY WATER COMMISSION**

**ENTITLED "SECOND LICENSE AGREEMENT FOR  
HARRISON AVENUE/LODI SYSTEM WATER TOWER"**

**DATE OF ADOPTION: MAY 24, 2023**

Approved as to form and legality by Law Department on basis of facts set forth by Executive Director, Purchasing, Engineering, and Finance Departments.

Introduced by Commissioner: **JOSEPH KOLODZIEJ**

Seconded by Commissioner: **JEFF LEVINE**

**WHEREAS** Passaic Valley Water Commission ("PVWC") leases certain property in the Borough of Lodi, County of Bergen, State of New Jersey ("the Borough"), memorialized in Lease Agreement between PVWC and the Borough entered into in 1997 ("the PVWC-Borough Lease Agreement"), subject to extension, pursuant to which PVWC operates public water utility facilities ("the PVWC Lodi Facilities");

**WHEREAS**, located on the PVWC Lodi Facilities site there exists a certain public water utility water tank tower, constructed by PVWC, sometimes referred to as the Harrison Avenue Elevated Water Storage Tank ("the Tank Tower");

**WHEREAS**, McKay Brothers, LLC ("McKay"), a developer of wireless communications facilities, is Licensee under License Agreement entered by PVWC as Licensor, approved by Resolution of the PVWC Board of Commissioner's adopted May 13, 2020 ("First McKay License"), authorizing McKay to install and operate on and about the Tank Tower, certain wireless communications antenna and related equipment, in conformity with the terms of stated therein;

**WHEREAS** McKay has proposed entry of a second license contract with PVWC for the use of certain additional spaces on and about the Water Tower to install, maintain, operate, replace, and/or remove at its own cost, additional antenna and related supporting wireless equipment, including

enclosures/ cabinets, for the installing, maintaining, and operating an additional wireless communications antenna installation ("Second McKay License");

**WHEREAS** McKay, having been earlier authorized to enter, through its agents, the PVWC Lodi Facilities for purpose of determining location and design of such additional proposed wireless communications facilities, having also earlier submitted to PVWC review, a proposed terms of Second McKay License, together with drawings of proposed location of contemplated additional wireless communication facilities attached as exhibit thereto;

**WHEREAS,** the design and construction of Water Tank provided for antennae mounting points so that multiple wireless communication antenna might be affixed to the Water Tower in anticipation of such requests from wireless communications service providers, such as McKay;

**WHEREAS,** following review by Waters, McPherson, McNeill, P.C., as Special Counsel to PVWC ("Special Counsel"), McKay has tendered an executed counterpart of the annexed proposed Second McKay License, and McKay has agreed therein to pay PVWC the sum of \$25,460.00 per year, subject to 5% annual increase, for the privilege and license to utilize the Water Tower in the manner described therein, on terms and conditions of use and compensation of PVWC, subject to periodic renewal as stated therein, which Special Counsel has advised are comparable to other antenna license arrangements entered by PVWC represented as being reasonable and consistent with market rates for comparable licenses;

**WHEREAS,** within the Second McKay License McKay further acknowledges that: **i.** the Second McKay License is not exclusive; **ii.** in addition to PVWC's own telemetry antenna mounting on the Tank Tower, PVWC has earlier allowed at least one antenna mounting on the Water Tower, along with antenna installed by McKay under the Initial McKay License; **iii.** PVWC reserves the right to extend similar licenses to other wireless communication providers; and **iv.** McKay is obligated to conserve

conduit space within the Tank Tower for potential future use for PVWC utility operations purposes.

**WHEREAS,** PVWC endeavors to keep its customers' water rates as low as reasonably possible, consistent with safe and effective utility service, and PVWC therefore duly accepts additional, non-utility, sources of revenue that are consistent with utility operations, such as fees received from wireless communications licensees, contributing to offset of revenue need that must otherwise be obtained through charges for water utility service;

**WHEREAS,** Special Counsel to PVWC, has reviewed the attached License agreement (Exhibit A) with McKay and has recommended its approval by the PVWC Board of Commissioners, the Second McKay License also providing terms of indemnity and insurance of PVWC, as well as provisions ensuring compatibility with water utility operations, and compliance by McKay with applicable law and regulation; and

**WHEREAS,** PVWC's entry of the Second McKay License on the terms provided for therein, will also facilitate the Borough's realization of equivalent revenue, under arrangement to be directly between the Borough and McKay, as consideration for the Borough's reasonable consent to the License as lessor under PVWC Lease Agreement;

**NOW, THEREFORE, BE IT RESOLVED,** by Passaic Valley Water Commission, in the County of Passaic, New Jersey:

That the appropriate officers of the Commission are hereby authorized to execute the Second McKay License and implement the terms thereof, in accordance with this Resolution and the submissions provided in connection therewith.

**RECORD OF COMMISSION VOTE ON FINAL PASSAGE**

	<b>AYE</b>	<b>NAY</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>SANCHEZ, R.</b>	<u><b>X</b></u>	___	___	___
<b>COTTON, R.</b>	<u><b>X</b></u>	___	___	___
<b>DEPADUA, C.</b>	<u><b>X</b></u>	___	___	___
<b>KOLODZIEJ, J.</b>	<u><b>X</b></u>	___	___	___
<b>LEVINE, J.</b>	<u><b>X</b></u>	___	___	___
<b>VAN RENSALIER, R.</b>	___	___	___	<u><b>X</b></u>
<b>FRIEND, G.</b>	<u><b>X</b></u>	___	___	___

**Adopted at a meeting of Passaic Valley Water Commission.**

  
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**President**  
**GERALD FRIEND**

  
\_\_\_\_\_  
**Secretary**  
**RUBY N. COTTON**

**This Resolution, when adopted, must remain in the custody of the Administrative Secretary.**

**CERTIFICATION**

I, LOUIS AMODIO, Administrative Secretary of the Passaic Valley Water Commission in the County of Passaic, and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy thereof of the foregoing Resolution duly passed and adopted by a majority of a legal quorum of the full membership of the Passaic Valley Water Commission at its duly noticed and convened meeting of the said Commission on May 24, 2023.

  
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**LOUIS AMODIO**  
**Administrative Secretary**