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DATE: May 13, 2025

TO: Board of Acquisition and Contract

FROM: Marguerite Beirne
Chief Information Officer
Department of Information and Technology

Susan Spear
Commissioner
Department of Emergency Services

SUBJECT: Resolution to exempt from the Westchester County Procurement Policy pursuant to Section 3(a)xxi thereof, the procurement of an agreement with Eastlink Communications LLC, for the right to be licensed ("Spectrum Right") by the Federal Communications Commission ("FCC") with respect to the use and operation of eight (8) transmit/receive radio frequency pairs ("Frequency Pairs"), for a not to exceed amount of \$3,600,000.00, pursuant to an approved budget (IT-1829)

Authority is respectfully requested from your Honorable Board to exempt from the Westchester County Procurement Policy pursuant to Section 3(a)xxi thereof, the procurement of an agreement ("Agreement") between the County of Westchester (the "County"), acting by and through its Department of Information and Technology ("Department"), and Eastlink Communications LLC ("Eastlink"), for the right to be licensed ("Spectrum Right") by the Federal Communications Commission ("FCC") with respect to the use and operation of eight (8) transmit/receive radio frequency pairs ("Frequency Pairs"), for a cost of \$450,000 for each of the eight (8) Frequency Pairs, for a total aggregate amount under the Agreement not to exceed \$3,600,000.00 ("Purchase Price"), payable as follows: \$90,000.00 as a refundable deposit ("Deposit") for each Frequency Pair, within fifteen (15) business days from the filing of an application with respect to such Frequency Pair; and (ii) the balance of the Purchase Price (less the Deposit) for each Frequency Pair will be paid by the County on the closing date. The Deposit shall be refundable except in the case of termination of this Agreement by material breach of the County, in which case Eastlink shall retain the Deposit as liquidated damages.

The closing date under the Agreement is anticipated to occur within five (5) business days after the FCC grant of the County's application(s) constituting a final order ("Final Order") by the FCC, which Final Order is expected within forty-five (45) days from the date the FCC consents ("FCC Consent") to the sale and purchase of the Licenses. The County may waive the requirement that the FCC Consent becomes a Final Order, in which case the closing will occur within fifteen (15) business days of the FCC Consent or within fifteen (15) business days of the County's waiver of the Final Order requirement, whichever is later.

The Closing for each Frequency Pair is subject to the satisfaction of certain conditions, including, among other things: (i) FCC Grant by Final Order of the County's application for the Frequency Pair; (ii) cancellation by Eastlink of its authorization(s) for the Frequency Pair; and (iii) modification caused by Eastlink of an incumbent license for the frequency pair adjacent to two of the Frequency Pairs for which the County is purchasing the Spectrum Rights.

It is anticipated that following the closing date for the Frequency Pairs, the County will seek reimbursement from the New York State Division of Homeland Security and Emergency Services ("State") in the amount of \$2,000,000.00. As a way of background, on April 20, 2023, your Honorable Board authorized the County to enter into an Emergency Operations Center ("EOC") grant agreement with the New York State Division of Homeland Security and Emergency Services ("State") for the implementation of the FY2022 Emergency Operations Center grant program ("EOC Grant"), in order for the County to accept \$2,000,000.00 in federal funds from the State to assist the County in its efforts to procure Ultra-High Frequency ("UHF") pairs, including the Frequency Pairs, in order to provide additional system capacity for the County's partner agencies, especially during times of heavy radio traffic. The EOC Grant, and the funds available thereunder, is set to expire on August 31, 2025 ("EOC Expiration Date").

As such, the Agreement may be terminated (i) by mutual consent of the Parties provided in writing; (ii) by either party upon material breach of the other party, following a thirty (30) day period for cure by the breaching party following written notice of the breach; (iii) by either party if the FCC has not granted the County application(s) needed to grant the Spectrum Right to the County for the respective Frequency Pair within one (1) year after submission of the County application to the FCC; (v) if the closing conditions have not been satisfied in full or waived within one (1) year following receipt of the FCC Grant; or (vi) by the County if EOC Grant funds are not made available to the County.

The purchase of the Licenses is required to assist the County in its efforts to procure Ultra-High Frequency ("UHF") pairs, including the Frequency Pairs, in order to provide additional system capacity for the County's partner agencies, especially during times of heavy radio traffic.

Because of the need of the Frequency Pairs and because it is difficult to obtain appropriate radio frequencies in New York metropolitan area, we recommend to your Honorable Board, that the County enter into the Agreement to purchase the Spectrum Right with respect to the use and operation of the Frequency Pairs. A resolution of even date requesting authority to enter into the Agreement is also before your Honorable Board and should be considered only if your Honorable Board accepts our recommendation.

Pursuant to Section 3(a)xxi, the Westchester County Procurement Policy is not applicable to any procurement for which this Honorable Board determines, by resolution passed prior to commencing such procurement, that compliance with the policy would not be in the best interests of the County. Based on the reasons described above, it is proposed that the best interests of the County would be served by exempting this procurement from the Westchester County Procurement Policy.

Attached for your approval is an appropriate resolution.

MB/cmc

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/15/2025 - RAYMOND SCULKY, SECRETARY

RESOLUTION

Upon a communication from the County Attorney and the Chief Information Officer, be it hereby:

RESOLVED, that pursuant to Section 3 (a) (xxi) of the Westchester County Procurement Policy, it is determined that application of the procedural requirements contained therein, including the necessity of soliciting oral or written price quotations, is neither cost effective nor expedient and accordingly not in the best interests of the County of Westchester in connection with the procurement of an agreement with Eastlink Communications LLC, for the right to be licensed by the Federal Communications Commission with respect to the use and operation of eight (8) transmit/receive radio frequency pairs, for a total aggregate amount not to exceed \$3,600,000.00.

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/15/2025 - RAYMOND SCULLY, SECRETARY