

**LICENSE
FOR
WIRELESS ANTENNA ON EXISTING STRUCTURE IN RIGHT OF WAY ("ROW")**

THIS LICENSE (this "License") is effective as of the date of the latter signature below (the "Effective Date") and is by and between Verizon Wireless (VAW) LLC, a Delaware limited liability company, d/b/a Verizon Wireless with an address at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) ("Licensee"), and the City of Mesa, an Arizona municipal corporation ("Licensor" or "City"). Licensor and Licensee are at times collectively referred to as "Parties" or individually as a "Party".

RECITALS

- A. Licensor in its proprietary capacity owns or holds an interest in the real property located at _____, Mesa, Arizona, (the "City Property"), further legally described on Exhibit A attached hereto and incorporated herein;
- B. Licensee desires to install and operate a wireless antenna mounted to the City-Owned Structure (as defined below) and install pad mounted equipment cabinet that is specified on the Site Plan, attached hereto as Exhibit B (the "Site Plan").
- C. Licensee desires, and Licensor is willing, to permit Licensee to place its antennas, lines and cables on the City-Owned Structure, together with a non-exclusive license for utilities, and ingress and egress for access, as set forth herein the use of that portion of the City Property as depicted on the Site Plan (the "Use Areas").
- D. Licensee acknowledges that the primary purpose of the City-Owned Structure to which the antenna is to be attached remains a light pole.
- E. Under the Mesa City Code ("M.C.C."), encroachments and/or construction in Mesa's rights-of-way and public easements are prohibited except with the authorization of a right-of-way permit under M.C.C. 9-1-2(A) and 9-2-3(A), and this License is intended to be such a permit.
- F. Mesa will permit the installation of the wireless antennas mounted to the City-Owned Structure and pad mounted equipment cabinet subject to the terms and conditions of this License and subject to all applicable conditions, limitations, and requirements of the Mesa City Code, applicable City policies, The Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the City Supplement to MAG, and Engineering Design Standards.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and Licenses contained herein to be kept and performed by Licensee and other good and valuable consideration, Licensor and Licensee agree

as follows:

1. DEFINITIONS

- 1.1 “Antenna(s)” means the physical structure, or structures, as depicted on the Site Plan which are attached to (or incorporated into) the City-Owned Structure that transmits and/or receives communications by converting electric currency to/from electromagnetic waves.
- 1.2 “Applicable Laws” means the federal, state, county, and City of Mesa laws, ordinances, rules, regulations; permit requirements, and regulations that apply to Licensee’s use of the Use Areas.
- 1.3 “Cable Route” as defined in Section 3(b).
- 1.4 “City-Owned Structure” means the vertical element owned by the City and located in the right-of-way or easement dedicated to the City, to which Licensee will attach an Antenna.
- 1.5 “City Property” means as defined in Recital A.
- 1.6 “Equipment Cabinet” shall mean the cabinet on a concrete slab that contains Licensee’s improvements, personal property and facilities to operate its Antenna(s) including: radio receivers, transmitters, related facilities, and/or cabinets, related cables and utility lines and a location based, power source (including a battery), the electrical meter and any other equipment necessary for the operation wireless antenna.
- 1.7 “Facilities” shall mean the Antennas, the Equipment Cabinet, and all other cable, wire, equipment, conduit, or other such element used by Licensee in connection with its installation of the Antennas on City Property, City rights-of-way or public easements.
- 1.8 “Hazardous Substances” means as defined in Section 13.
- 1.9 “License” means a revocable, nonexclusive permission to encroach in the City’s right-of-way and/or public easements, which does not create or confer any interest in real or personal property.
- 1.10 “License Fee” means as defined in Section 4.
- 1.11 “Licensee Improvements” means any installation or improvements conducted by Licensee, including, but not limited to, the Facilities.
- 1.12 “Permitted Uses” means, and is limited to, Licensee's right to construct, install, operate, maintain and repair the related support facilities (such as wireless antennas and equipment cabinets) but only for the provision of what is commonly known as cellular telephone and related data services (whether or not technically referred to as Personal Communications Service, or some other term) by the use

of "personal wireless service facilities" (as such phrase is defined in §704 of the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), partially codified at 47 U.S.C. § 332(c) (7) (C) (2), hereinafter "1996 Act Section 704") and not for any other purpose.

- 1.13 "Use Area" means the area that will be used by the Licensee. The term Use Area includes but is not limited to the area depicted on the Site Plan that shows where the Antenna will be attached to the light pole, and where the Equipment Cabinet and Cable Route will be.

2. Term.

(a) The initial term of this License shall be five years (5) years and shall commence on the Commencement Date (as hereinafter defined) (the "Initial Term"). The License shall commence upon the first day of the month following the date Licensee is granted a city utility permit by the Licensor permitting installation of the Facilities (the "Commencement Date"). Licensor and Licensee acknowledge and agree that initial License Fee payment(s) shall not actually be sent by Licensee until thirty (30) days after the Commencement Date. [Renewal terms to be further negotiated.]

3. Permitted Use.

(a) The Licensee is granted a license to use the Antenna(s), Equipment Cabinet and Facilities for the Permitted Uses. Licensee shall, at its own expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use of (and operations, maintenance, construction and/or installations at) the Facilities pursuant to the Site Plan and construction drawings and Photo Simulation approved by Licensor and attached as Exhibits B and C.

(b) Licensee shall depict on Exhibit B:

- (i) the proposed area for attachment of the Antennas to the existing structure;
- (ii) the proposed areas for location of Equipment Cabinet(s) with clearances from existing infrastructure;
- (iii) the location and size of all existing facilities and the right-of way, including the lip of the street gutter, the edge of the street pavement, sanitary sewer lines, water lines, irrigation facilities, other utilities, landscaping, structures, street lights and traffic signals;
- (iv) a cable route (the "Cable Route") from the Antenna to the Equipment Cabinet used by Licensee for power source, voice and data communication lines between the Equipment Cabinet and the Antenna;
- (v) the existing rights-of-way and adjacent easements, including dimensions and labels for each type of land interest; and
- (vi) a legend or key to describe and distinguish the items, structures and elements on the Exhibit.

(c) Notwithstanding any provision in this License to the contrary, Licensor shall have the right, at any time during the Term of this License, to request relocation of the Facilities or any portion of them, at Licensee's expense, to another location suitable for Licensee's use. Licensee shall be given at least ninety (90) days' notice of such relocation and shall fully cooperate in such relocation. If Licensee fails to relocate as required by this section, Licensee shall reimburse Licensor for actual, direct and indirect damages incurred by the City as a result of such delays. Licensor shall permit Licensee to place a temporary Antenna facility (Cell on Wheels or similar installation) on the City Property or at some other location acceptable to Licensee, at Licensee's costs until such relocation is complete.

(d) Licensor shall have the right to temporarily or permanently augment, abandon, expand, contract, convey and otherwise modify the configuration of the right-of-way in the area of the Site Plan from time to time during the Term of this License. Such reconfigurations may be done without Licensee's consent so long as Licensee continues to have reasonable access to the Facilities and Licensee continues to be able to operate, without a service interruption, the Facilities. Pursuant to subsection (j), Licensee shall become a member of Arizona Blue Stake, and Licensee shall notify Licensee, on the City's customary schedule relating to capital projects, if the City's planned capital projects may affect Licensee's Facilities. [Licensee in Arizona Bluestake subject to negotiations.]

(e) Licensee will apply to the City annually and obtain a blanket permit for any maintenance and emergency work required during the Term of this License. Licensee shall be required to obtain one blanket permit to allow for emergency and maintenance work on any and all Facilities that the Licensee has installed in the City's right-of-way and/or on the City's light poles located in the right-of-way or public utility easements.

(f) Licensee has examined, studied and inspected the Use Area and all other property associated with this License and its environs. Licensor hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose or absence of hazardous conditions associated with the City Property and Use Areas. Licensee accepts the Use Area "As Is." Licensee has obtained such information and professional advice as Licensee has determined to be necessary related to the Use Area and this License. Licensee assumes all risk, costs and expenses related to its Antenna and Equipment Cabinet and loss of service that may occur due to damage, destruction or collapse of the Tower or due to any incompatibility of Licensee's use with Licensor's use, or other user's use, of the Tower or Use Area.

(g) Licensee shall not place or allow the placement of any sign or graffiti on the Use Area, except (a) it shall install signs (which shall be depicted on the Site Plan) for emergency notification and identification and which provide a toll-free number to contact Licensee 24 hours a day, (b) as required by the FCC under 47 C.F.R. Section 1.1310, or subsequent Federal rules as from time to time in effect, or (c) as otherwise required by law. After thirty (30) days' notice to remove, Licensor at any time may enter the Use Area and at Licensee's expense to undertake any activities necessary to abate or remove graffiti or prohibited signs located therein.

(h) Licensee shall not construct, cause to be constructed or place any lighting on the City Property without the prior written approval of Licensor.

(i) At all times during any Term of this License the light pole to which the antenna is attached, which is the subject of this License, remains the property of the City.

{00133752.1}

(j) Licensee shall comply with Arizona Revised Statutes Title 40, Chapter 2, Article 6.3 by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City). A copy of Licensee's proof of membership shall be filed with the City.

(k) Prior to construction or installation of the Facilities, Licensee shall obtain all applicable permits (including, but not limited to, construction and right-of-way permits). No improvement, construction, installation or alteration shall be commenced until plans for such work has been approved by the Licensor and all necessary permits have been properly issued. Once construction has begun, Licensee shall diligently work to complete construction of the Facilities

4. License Fee.

4.1 Licensor and Licensee agree that as consideration for Licensee's right to use the Facilities and Use Areas under this License, for the duration of the Term, Licensee shall pay to Licensor the fee ("License Fee") stated in the "Annual Fees for Wireless Service Facilities (WSF) In The Row" attached hereto as Exhibit "E" and incorporated herein (the "Fee Structure"). For purposes of the Fee Structure, the parties acknowledge and agree that this License constitutes as a "Category ____" facility.

4.2 Except as otherwise provided for above, the License Fee shall be paid to Licensor, in advance, on the first day of each calendar month, without prior demand and without any deduction or setoff whatsoever.

4.3 Licensee expressly waives any right of setoff and shall pay all License Fees directly to Licensor without setoff or deduction of any description.

4.4 In the event of a holdover, the License Fee shall be increased by an additional fifty percent (50%) over the amount of the License Fee that would otherwise be payable under this License.

5. Interference, Testing and Reservation.

(a) Licensee shall not use the City Property in any way which interferes with the current use (as of the Effective Date) of any portion of the City Property by Licensor. In the event Licensor determines that Licensee's use of the Use Area interferes with the City's current use of the City Property, City shall notify Licensee of such interference and Licensee shall have fifteen (15) days to remedy the interference. If Licensee does not remedy the interference notified of, such action shall be deemed a material breach by the Licensee and Licensor shall have the right to terminate this License pursuant to Section 8. Licensee shall also be required to remedy any interference with any future use of the City Property only if such future use is required under applicable law or is required to serve a public interest.

(b) Licensee shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of Licensor's existing or future fire, law enforcement, Police, Public Safety, municipal, emergency or other communication equipment, methodology or technology (including, but not limited to, {00133752.1})

voice, data or other carrying, receiving or transmitting equipment). If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Licensee takes corrective measures to alter the Antenna to eliminate such interference. Any such corrective measures shall be made at no cost to Licensor. Licensee shall give Licensor a written notice containing a list of the radio frequencies Licensee is using at the Use Area and shall give written notice to Licensor of any change in frequencies.

(c) Both Licensor and Licensee shall be allowed to conduct radio frequency emission and interference studies from time to time to determine whether Licensee's use of the Antenna will interfere with Licensor's use of the City Property. In the event that such a study indicates that Licensee's use will potentially interfere with Licensor's use of the City Property, Licensee shall have sixty (60) days to remedy the interference to Licensor's satisfaction. If the problem is not so remedied in sixty (60) days, then Licensor may require Licensee, at Licensee's full expense, to relocate Licensee's Antenna so as to remove or minimize the interference, to the extent Licensor deems necessary. Licensor shall permit Licensee to place a temporary Antenna (Cell on Wheels or similar installation) on the City Property or at some other location acceptable to Licensee and Licensor, during relocation of City Property.

(d) Licensor may, at its expense, perform tests as necessary to determine compliance of the Antenna and Equipment Cabinet on the City Property with Federal radio frequency exposure limit rules, 47 C.F.R. Section 1.1310, or subsequent Federal rules as amended from time to time.

(e) Licensee shall conduct an initial test for compliance with Federal radio frequency exposure limit rules prior to placing Licensee's equipment (or that of any sub-lessees of Licensee) on the City Property into commercial operation, and Licensee shall perform additional tests upon any significant change in the equipment on the City Property, such as sublicenses to third parties for them to install communications equipment on the City Property. All such testing shall be performed by a qualified radio engineer, and a copy of the test results shall be provided to all Parties. If such tests show noncompliance with applicable radio frequency exposure limit rules then in effect, then all communications equipment on the City Property shall be shut down (except for work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.

(f) Licensor does not grant, and reserves for itself, its lessees, successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, other hydrocarbons or minerals on, as to, under or about any portion of the City Property; (ii) rights to generate electricity from the wind or wind power on, as to or about any portion of the City Property; and (iii) the right to grant to others the rights hereby reserved.

(g) Licensor shall have the right to replace and maintain the City Owned Structure in the event of damage and pursuant to a maintenance schedule.

6. Licensee Improvements; Utilities; Access.

(a) All work in the City right-of-way and easements will be performed substantially in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by MAG, the City supplements to MAG and City engineering design standards.

{00133752.1}

(b) Licensee shall maintain record drawings of its Facilities located in the City's rights-of-way and public utility easements. Locations of said encroachments shall be reported using State Plan Coordinate System Arizona Central Zone, North American Datum 1983 (NAD83) for horizontal position, and North American Vertical Datum 1988 (NAVD88) for vertical positions; or other public land survey system accepted by the City Engineer or designee. Licensee shall furnish City copies of the record drawings in both hard copy and electronic formats, as requested by the City. The electronic copy shall be provided in Autocad 2004 DWG format or other current City electronic format. In the event the horizontal and vertical locations are not known or provided as requested by the City, the Licensee shall reimburse the City for actual costs associated with locating and potholing Licensee's Facilities, in the event that Licensee's Facilities need to be located in connection with one of the City's capital projects.

(c) Licensee shall provide horizontal and vertical locations through offsets and stationing of their facilities, using a preferred horizontal datum, as requested by the City for City projects. In the event the horizontal and vertical locations are not known or provided, the Licensee shall reimburse the City for actual costs associated with locating or potholing their facilities.

(d) If the Facilities are not located in the precise location shown in the As-Built Drawings, Licensee shall be responsible, and reimburse City, for all costs and damages incurred in locating the Facilities and all delay costs incurred to locate (and if necessary relocate) the Facilities.

(e) Licensee shall have the right to alter, replace, enhance or upgrade the Facilities at any time during the Term of this License to the extent that such changes do not materially differ from Exhibit B. Any like for like modifications from Exhibit B require 10 days' prior notice to Licensors. Other modifications which are not like for like and/or change the size or appearance of the Facilities require advance notice and Licensors' written approval, which will not be unreasonably withheld.

(f) Licensee shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against the City Property as a result of acts or omissions of Licensee or Licensee's employees, agents or contractors, Licensee shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Licensors within thirty (30) days after Licensee receives written notice that the lien has been filed.

(g) Licensee shall, at Licensee's expense, keep and maintain the Antenna and the Equipment Cabinet now or hereafter located on the City Property in a commercially reasonable condition and repair during the Term of this License, normal wear and tear and casualty excepted.

(h) Licensee shall install separate meters for any utilities used by Licensee and shall pay for all utilities supplied to, used, or consumed as a result of Licensee's use of the Use Area, including without limitation (as applicable) all gas, electric, sanitation, and telephone installation and monthly use charge. Licensee shall comply with all City of Mesa Ordinances, Utility Terms and Conditions, and regulations related to utility services. In the event of an emergency or an accident or condition that causes the City to replace or remove the Antenna and/or the Equipment Cabinet, Licensee at its sole expense shall be responsible for the reconnection to a {00133752.1}

utility.

(i) Licensee shall keep the Use Area free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

(j) Other than a Licensee is not allowed to place a backup power supply (generator or battery, permanent or temporary) on the City Property without the prior written consent of Licensor.

7. Termination. Except as otherwise provided herein, this License may be terminated, without any penalty or further liability as follows:

(a) Licensee shall have the right to terminate this License with or without cause upon thirty (30) days written notice, so long as Licensee either has not begun any construction or installation of the Antennas.

(b) Upon twelve (12) months written notice by Licensee if despite diligent effort by Licensee, Licensee is unable to obtain, maintain, or otherwise forfeits, cancels or has been canceled, or allows to expire without renewing any license (including, without limitation, an FCC license), permit or any governmental approval necessary for the installation and/or operation of the Facilities;

(c) Upon ninety (90) days' written notice by Licensee if destruction or damage to the City Owned Structure substantially or adversely affects their effective use; or

(d) No later than sixty (60) days following the termination or expiration of this License or at such later time as may be allowed under this License, Licensee, at Licensor's request, shall remove the Facilities and restore the right-of-way or public easement property where the Facilities are located to a condition equal to or better than the right-of-way property immediately adjacent to where the Facilities are located. Additionally, Licensee's removal and restoration will not be deemed complete until it is approved by Licensor, and such approval may not be unreasonably denied.

If Licensee fails to remove the Facilities and restore the property as required above, Licensor at its election may: (i) remove the Facilities and restore the property and Licensee shall be financially liable and pay (within 30 days of invoice) all costs for such removal and restoration; or (ii) give notice to Licensee that Licensor will retain the Facilities, and in such event Licensee's right, title and interest in the Facilities shall immediately vest in City. Licensee hereby releases Licensor from all damages as a result of the removal and disposal of the Facilities.

The provision of this Section 7 shall survive the expiration or any termination of this License.

8. Default and Right to Cure.

(a) Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, Licensor shall have the right, but not the obligation, to terminate this License on written notice pursuant to Section 7 above to the

{00133752.1}

addresses and person listed in Section 11 to take effect immediately, if Licensee fails to perform any material covenant for a period of thirty (30) days after receipt of written notice thereof to cure; provided, however, Licensee shall have such period of additional time (not to exceed 90 total days) if the nature of such cure reasonably requires additional time and Licensee has commenced the cure process and is diligently pursuing its completion.

(b) Licensee shall be in default if it Licensee (i) fails to make any payment of the License Fee or other sums to Licensor when due, and does not cure such default within ten (10) days after receipt of written notice from Licensor of such failure; (ii) abandons or vacates the City Property; (iii) is adjudicated as bankrupt or makes any assignment for the benefit of creditors; (iv) if Licensee becomes insolvent; (v) defaults in maintaining any insurance required by this License. Notwithstanding the preceding sentence, such failure shall not be a default if within five (5) days after notice from Licensor; Licensee provides to Licensor the required insurance and the required evidence thereof. Such insurance must cover the lapsed coverage period so that there is no gap in the insurance coverage required by this License.

(c) In the event of a default, Licensor shall have the right, at its option, in addition to and not exclusive of any other remedy Licensor may have by operation of law, without any further demand or notice, to re-enter the City Property and terminate this License pursuant to Section 7.

(d) If suit shall be brought by Licensor for recovery of possession of the Use Area, removal of Licensee's equipment, for the recovery of any License Fee or any other amount due under the provisions of this License, or because of the breach of any other covenant, and Licensor prevails upon such suit, then Licensee shall pay to the Licensor all reasonable expenses incurred therefor, including reasonable attorney fees actually incurred.

(e) In the event of any default of this License by Licensee, the Licensor may at any time, after notice has been given as set forth in subsection (a) above, cure the default for the account of and at the expense of the Licensee. If Licensor is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Licensor's rights under this License, the sums so paid by Licensor, with all interest, costs and damages shall be deemed to be License Fee otherwise due and shall be added to the License Fee and shall be due from the Licensee to Licensor on the first day of the month following the incurring of the respective expenses.

9. Taxes and Liens.

(a) Licensee shall pay or cause to be paid, before delinquency, any and all taxes and assessments which Licensor reasonably evidences to be attributable to the Licensee Improvements. Licensee shall protect and hold harmless Licensor, the City Property and Use Areas from all liability for any and all such taxes and assessments and charges together with any interest, penalties or other charges thereby imposed, and from any sale or other proceeding to enforce payment thereof.

(b) Government Property Lease Excise Tax. Licensee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 et seq. or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by

Licensee to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Licensee of any interest in or right of occupancy of the Use Areas.

(c) Liens. Licensee shall keep and hold Licensors, the City Property and the Use Areas harmless from and against any liens or claims arising out of any work performed, materials furnished or obligations incurred by Licensee, and shall indemnify and hold Licensors harmless against the same, together with all costs of suit and reasonable attorney's fees incurred by Licensors in connection therewith.

(d) Licensee Payments Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future obligation shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or set off against each other in any manner.

10. Insurance. [PARTIES TO CONFIRM APPROVED AND FINALIZE]

(a) Insurance Responsibility. During the Term of this License, Licensee shall insure the Use Area and property and activities at and about the Use Area as follows:

(b) Insurance Required. Prior to entering, occupying or using the Use Area in any way, and in any event not later than ten (10) days after the Commencement Date, and at all times thereafter, Licensee shall obtain and cause to be in force and effect the following insurance:

(i) Commercial General Liability and Environmental Liability. Commercial general liability insurance with a limit of Two Million Dollars (\$2,000,000) for each occurrence, a limit of Two Million Dollars (\$2,000,000) for products and completed operations annual aggregate, and a limit of Five Million and No/100 Dollars (\$5,000,000.00) general aggregate limit. The policy shall cover liability arising from premises operations, independent contractors, products, completed operations, contractual liability, personal and advertising injury, bodily injury and property damage. The policy shall contain a "separation of insureds" clause. If environmental pollution or environmental hazards are excluded from the General Liability policy a separate Pollution Insurance Policy shall be required with the same limits as required for the General Liability coverage.

(ii) Automobile Liability. Automobile liability insurance with a limit of One Million and No/100 Dollars (\$1,000,000.00) for each occurrence covering all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Licensee's use of the Use Areas. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

(iii) Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

(iv) Other Insurance. Any other insurance Licensors may reasonably require for the protection of Licensors, the Use Areas, surrounding property, Licensee, or the activities carried on or about the Use Areas. Additionally, Licensors may elect by notice to Licensee to {00133752.1}

increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided.

(c) Form of All Insurance. All insurance provided by Licensee with respect to the premises shall meet the following requirements:

(i) “Occurrence” coverage is required. “Claims made” insurance is not permitted.

(ii) All general liability policies shall cover Licensor and Licensor's employees, officials, representatives, volunteers, officers, and agents (collectively, the “Additional Insureds”). Each such policy shall include cross-liability/separation of insureds. Licensee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Licensee may maintain.

(iii) Licensee must clearly show by providing copies of insurance certificates and that all insurance coverage required by this License is provided. Upon request and at reasonable times, Licensee will make its policies available for review at a Verizon location in Maricopa, Arizona. After such review, copies will be allowed to be removed from the premises and all policies will be returned to the Risk Management Department.

(iv) Licensee may provide the required insurance coverage through a self-insured program only if such self-insurance program is approved in writing by Licensor, and such approval may subject to additional requirements and be given or withheld in Licensor's sole discretion and revoked by Licensor at any time.

(v) Intentionally deleted.

(vi) Licensee's insurance shall provide that shall be the primary insurance as to the risks it covers, and Licensor's insurance shall be secondary.

(vii) The workers' compensation, shall waive rights of recovery (subrogation) against Licensor and the Additional Insureds.

(viii) Licensee shall be solely responsible for any self-insured amount or deductible.

(ix) All applicable property policies must list Licensor as a loss payee. This paragraph shall only apply to the portions of construction and similar work that is, will or may become Licensor's property under the terms of this License.

(x) Intentionally deleted.

(xi) All policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this License.

(xii) Intentionally deleted.

(d) Acceptable Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an “A.M. Best” rating of not less than A-VII, unless otherwise approved in writing by the Licensor.

(e) Licensor’s Election to Provide Insurance. Licensor is not required to carry any insurance covering or affecting the Use Areas or use of Licensor’s property related to this License. Any insurance or self-insurance maintained by Licensor shall not contribute to Licensee's insurance.

(f) Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Failure to demand evidence of compliance with the insurance requirements set forth in this License or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee’s obligation to maintain the required insurance at all times during the performance of the License.

(g) Use of Subcontractors. Before Licensee allows any contractor, subcontractor or other person to occupy, use or work on or about the Use Area pursuant to this License, Licensee shall comply with the following:

(i) Licensee shall cause such person to provide to Licensor the same worker’s compensation and automobile liability insurance with respect to such contractor, subcontractor, or other person’s acts that this License requires Licensee to provide to Licensor herein.

11. Notices.

(a) All notices, requests, demands and other communications shall be in writing and are effective upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Licensor or Licensee may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to Licensee, to:

Verizon Wireless (VAW) LLC,
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate
Site Name:

If to Licensor, to:

City of Mesa
Real Estate Services
P.O. Box 1466
Mesa, Arizona 85211-1466

(b) Notice for all operational and emergency contacts shall initially be as follows. Licensors and Licensees shall each notify the other as the following change from time to time:

If to Licensee, for general operational matters: Licensee Emergency Services contact:

Verizon Wireless
126 W. Gemini Drive
Tempe, AZ 85283

Network operations center – 800-264-6620

If to Licensor, for general operational matters: Licensor Emergency Services contact:

Lori Greco
Right Of Way Manager
City of Mesa
P.O. Box 1466
Mesa, Arizona 85211-1466

12. Indemnification [TO FURTHER NEGOTIATE SCOPE OF INDEMNITY CLAUSE]

(a) In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, except to the extent caused by or arising out of the negligence or willful misconduct of the Licensor and the Licensor Parties (as defined herein), Licensee shall pay, indemnify, defend and hold harmless Licensor and Licensor's employees, officials, representatives, volunteers, officers, and agents (the "Licensor Parties") for, from and against any and all claims, allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) related to or arising out of: (i) Licensee's (or its agents, contractors, representatives, or employees) (the "Licensee Parties") use of, or construction or maintenance on, the Facilities and Use Areas; (ii) any negligent act, error, mistake or omission by Licensee or the Licensee Parties in the performance of this License; and/or (iii) Licensee's (or its agents, contractors, representatives, or employees) failure to fully comply with the terms, conditions, and requirements of this License. As a condition to Licensor's executing this License, Licensee specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Licensee for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

(b) Except to the extent caused by or arising out of the negligence or willful misconduct of the Licensee Parties, Licensor shall pay, indemnify, defend and hold harmless Licensee and the Licensee Parties for, from and against any and all claims, allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the {00133752.1}

cost of appellate proceedings) related to or arising out of: (i) the use of the City Property (excluding the Use Areas) by Licensor and the Licensor Parties; (ii) any negligent act, error, mistake or omission by Licensor or the Licensor Parties in the performance of this License; and/or (iii) Licensor's failure to fully comply with the terms, conditions, and requirements of this License.

(c) Risk of Loss. Notwithstanding any provision to the contrary, except to the extent caused by or arising out of the negligence or willful misconduct of the Licensor and Licensor Parties, Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Use Area or other property owned by Licensor, Licensee or third parties. Licensee shall be responsible for any and all damage to its property and equipment related to this License.

(d) Indemnities and Insurance Cumulative. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure does not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this License. The amount and type of insurance coverage required by this License will in no way be construed as limiting the scope of the indemnities in this paragraph.

(e) Survival. The terms, conditions, obligations, and requirements (including but not limited to the indemnity, duty to defend, and hold harmless obligations) in this Article 13 shall survive the expiration or termination of this License.

13. Environmental Laws. Licensee, its officers, agents, affiliates, contractors and subcontractors and employees, shall not introduce or use any Hazardous Substance on the City Property in violation of any applicable law. "Hazardous substance" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term pursuant to any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after relicense into the environment will or may reasonably be anticipated to cause sickness, death or disease. Except to the extent caused by or arising out of the negligence or willful misconduct of Licensor or the Licensor Parties, Licensee agrees to defend, indemnify and hold harmless Licensor from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the Licensor may suffer or incur due to the existence or discovery of any Hazardous Substances on the City Property or the migration of any Hazardous Substance to other properties or the relicense of any Hazardous Substance into the environment, that relate to or arise from Licensee's activities, or those of its officers, agents, affiliates, contractors and subcontractors and employees. The indemnification in this section specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 13 shall survive the termination or expiration of this License. For purposes of this License, "Hazardous substance" shall not include a backup support battery for Licensee's Facilities, which shall be expressly permitted herein.

14. Assignment and Subleasing.
{00133752.1}

(a) Licensee shall have the right to assign or otherwise transfer this License to any person or business entity which (i) holds a valid FCC license to provide to the public from the Use Area what are commonly known as cellular telephone services (ii) is a subsidiary or affiliate of Licensee, is merged or consolidated with Licensee or purchases more than fifty percent (50%) of either an ownership interest in Licensee or the assets of Licensee in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the City Property is located, and (iii) which has a credit rating from one of the three largest national credit rating agencies greater than or equal to that of Licensee at the time of the assignment. Upon notice to Licensors of such assignment, Licensee shall be relieved of all liabilities and obligations hereunder and Licensors shall look solely to the assignee for performance under this License and all obligations hereunder; provided assignee accepts this License in full, without amendments or changes thereto, steps into the shoes of Licensee, including being responsible and liable for events or defaults which occurred prior to the assignment, and cures any outstanding defaults. Licensors may still hold Licensee liable under this License if the assignment is to an assignee which has a credit rating from one of the largest three national credit rating agencies lower than that of the Licensee at the time of assignment.

(b) Licensee may not, mortgage or grant a security interest in this License and/or the Antenna and/or the Equipment Cabinet.

(c) Any person or entity to which this License is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Licensee arising under this License both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Licensors an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Licensors, shall be the exclusive property of Licensors, and shall not constitute property of the Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Licensors' property under the preceding sentence not paid or delivered to Licensors shall be held in trust for the benefit of Licensors and be promptly paid to Licensors.

15. Successors and Assigns. This License and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and assigns.

16. Dispute Resolution.

(a) Except as otherwise provided in this License, any controversy between the Parties arising out of this License or breach thereof, is subject to the mediation process described in (b).

(b) A meeting will be held promptly between the Parties to attempt in good faith to negotiate a resolution of the dispute. Individuals, representing the Parties, with decision making authority (or, in the case of a Licensors which is a public body, the authority to recommend decisions to Licensors' Board or legislative body) will attend the meeting regarding the dispute. If within twenty (20) days after such meeting the Parties have not succeeded in resolving the dispute (subject to approval by Licensors' Board or legislative body), they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third Party mediator who is {00133752.1}

acquainted with dispute resolution methods. Licensor and Licensee will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither Party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings.

(c) The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be born equally by the Parties. Each Party's costs and expenses will be borne by the Party incurring them.

17. Treatment in Bankruptcy. The Parties to this License hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this License Licensee shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this License is and shall be treated as an "unexpired license of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

18. Force Majeure. If a Party is delayed or hindered in, or prevented from the performance required under this License (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, acts of God or other reasons of like nature, not the fault of the Party delayed in performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts, then such Party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Licensee invokes this provision because damage to the City Property has hindered, delayed, or prevented Licensee from using the Use Area, Licensee may immediately erect a temporary antenna facility on the Use Area necessary to resume service, provided that such temporary facility does not unreasonably interfere with Licensor's use of the City Property or ability to repair or restore the City Property. If, in Licensor's sole and absolute discretion, it elects to repair or restore the City Property, upon completion of such repair or restoration, Licensee is obligated to repair the Antenna and the Equipment Cabinet in accordance with the terms of this document.

19. Non-Waiver. Failure of Licensor to insist on strict performance of any of the conditions, covenants, terms or provisions of this License or to exercise any of its rights hereunder shall not waive such rights, but Licensor shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Licensee to Licensor after a breach of this License shall not be deemed a waiver of such breach unless expressly set forth in writing.

20. Miscellaneous.

(a) Except for indemnification pursuant to Paragraphs 12 and 13, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

(b) Each Party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This License together with all attached exhibits constitutes the entire License and understanding of the Parties, and supersedes all offers, negotiations and other Licenses. There are no representations or understandings of any kind not set forth herein. Any amendments to this License must be in writing and executed by both Parties.

(d) Each Party agrees to cooperate with the other in executing any documents necessary to protect its rights or use of the City Property. Licensee may obtain title insurance on its interest in the City Property. Licensor agrees to execute such documents as the title company may reasonably require in connection therewith.

(e) This License shall be construed in accordance with the laws of the State of Arizona.

(f) If any term of this License is found to be void or invalid, such finding shall not affect the remaining terms of this License, which shall continue in full force and effect. The Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this License will be deemed waived by either Party unless expressly waived in writing signed by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. No waiver by either Party of any provision of this License shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this License represent and warrant that they are duly authorized to execute this License in their individual or representative capacity as indicated.

(h) This License may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

(j) If Licensee is represented by any broker or any other leasing agent, Licensee is responsible for all commission fees or other payment to such agent, and agrees to indemnify and hold Licensor harmless from all claims by such broker or anyone claiming through such broker.

(k) Licensor hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the City Property. Licensee accepts the City Property "As Is."

(l) Licensee shall conduct its activities in coordination with Licensor as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Use Area, all other occupants of the Use Area, and the occupants of surrounding real property (this is not intended to, nor shall it, create any third party beneficiaries rights under this License). Licensee shall immediately give to Licensor notice of any actual or threatened dispute, violation or other dispute relating to the Use Area. Licensee is not an agent for Licensor.

{00133752.1}

(m) Licensee shall at all times comply with all Applicable Laws. Further, Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee. This License does not impair City of Mesa's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Licensee, the City Property, or the Use Area.

(n) Whenever the context of this License requires, the singular shall include the plural, and the masculine shall include the feminine. This License was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any Party, regardless of their respective roles in preparing this License. The terms of this License were established in light of the plain meaning of this License and this License shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Licensee.

(o) The paragraph headings contained herein are for convenience and reference and not intended to define or limit the scope of any provision of this License. The recitals set forth above are made a part of this License and incorporated herein for all purposes.

(p) No person or entity shall be a third party beneficiary to this License or shall have any right or cause of action hereunder. Licensors shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this License (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this License.

(q) The Parties are aware of Sections 6003 and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a) ("Section 6003" and "Section 6409(a)"), are aware that such Sections have not yet been interpreted and applied by the courts, have differing views on the Sections' potential applicability to this License, and have consulted their respective legal counsel with respect to same. Licensors may contend, among other things, that Sections 6003 and 6409(a) are unconstitutional under the Commerce Clause, Fifth and Tenth Amendments to the U.S. Constitution, do not apply to units of government acting in a proprietary capacity or if applied to Antennas in the public rights of way may jeopardize the public health, safety and welfare. The resolution of such contentions, which may not come to pass, is premature. In order to reach agreement on the terms of this License, and only for the purposes of it, the Parties agree on a covenant not to sue as follows:

"Licensee, and its successors and assigns will not sue or contend, in any court, or before any agency or in any proceeding, that Sections 6003 or 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a), apply to or affect approvals required to be obtained from Landlord pursuant to this License. For the purposes of the preceding: Sections 6003 or 6409(a) include any rule, order, guidance, interpretation or decision to the extent based on either or both such Sections, and; agency includes the Federal Communications Commission."

(r) Drug Free Workplace Program. Licensee is hereby advised that the City of Mesa, to ensure the safety and health of employees and the public working on City contracts/projects, has adopted a policy establishing a drug free workplace for itself and as a requirement for contractors doing business with the City. Licensee shall require a drug free workplace for all

{00133752.1}

employees working under this License. Licensee and its employees and agents who are working under this License shall not manufacture, distribution, dispensation, possession or unlawfully use a controlled substance in the workplace. Licensee shall prohibit and ensure that its employees do not possess or use, and its employees and agents shall not use and shall not be under the influence of, intoxicating substances and/or illegal drugs while installing, constructing or maintaining Licensee's Improvements.

(s) Compliance with Federal Immigration Laws and Regulations. Licensee agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this License and to permit the City or its agents to inspect personnel records to verify such compliance. Licensee shall ensure and keep appropriate records to demonstrate that all employees have a legal right to live and work in the United States. To the extent A.R.S. §§ 23-214 and 41-4401 are applicable under this License, the following shall apply: Under the provisions of A.R.S. §41-4401, Licensee hereby warrants to the City that Licensee and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and complies with A.R.S. §23-214(A) (the "Consultant's Immigration Warranty"). A breach of this Immigration Warranty shall constitute a material breach of this License and shall subject Licensee to penalties up to and including termination of this License at the sole discretion of the City. City may, in its sole discretion, inspect the papers of, and/or conduct random verification of the employment records of, Licensee or its subcontractors' employees who provide services under this License to ensure compliance with this Immigration Warranty. Licensee agrees to assist the City in regard to any inspection of records or random verification performed. Neither the Licensee nor any of its subcontractors shall be deemed to have materially breached this Immigration Warranty if the Licensee or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

(t) Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

(u) Surviving Provisions. All warranties, representations, and duties to indemnify, defend, and hold harmless by Licensee shall survive the termination or expiration of this License. Additionally, Licensee's obligations to restore the Use Area and any other obligations or sections of this License that reasonably should survive shall survive the termination or expiration of this License.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

City of Mesa

By:

Printed Name:

Christopher J. Brady

Its:

City Manager, or Designee

{00133752.1}

Date: _____

LICENSEE:

Verizon Wireless (VAW) LLC,
a Delaware limited liability company,
d/b/a Verizon Wireless

By: _____

Printed Name: Brian Mecum

Its: Area Vice President Network

Date: _____

EXHIBIT A

Legal Description

Legal Description of Fee Parcel Owned by Licensor

The City Property is legally described as follows:

[INSERT LEGAL DESCRIPTION OF PROPERTY]

{00133752.1} {00133752.1}
Site Name: YYYY
Location Code: ZZZZZ

{00133752.1} {00133752.1}

Site Number: XXXX

EXHIBIT B

**Site Plan
(together with access and utilities)**

(ATTACH SITE PLAN)

{00133752.1} {00133752.1}
Site Name: YYY
Location Code: ZZZZ

{00133752.1} {00133752.1}

Site Number: XXXX

EXHIBIT C
PHOTO SIMULATION OF PROPOSED STRUCTURE

{00133752.1} {00133752.1}
Site Name: YYY
Location Code: ZZZZ

{00133752.1} {00133752.1}

Site Number: XXXX

EXHIBIT D

**Photo Simulations of the Appearance of
the City Property and City Property
Upon Completion of Construction**

[ATTACH PHOTO SIMULATIONS]

EXHIBIT E

See Attached Fee Structure