



City of Grand Island

Tuesday, July 12, 2016

Council Session

Item G-14

#2016-172 - Approving License Agreement between Fonner Park Exposition and Events Center and Verizon Wireless (Heartland Events Center)

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: July 12, 2016

Subject: Approving License Agreement between Fonner Park Exposition and Events Center, Inc. and Verizon Wireless, LLC

Presenter(s): Jerry Janulewicz, City Attorney

Background

Through a master license agreement between the Hall County Livestock Improvement Association (“Fonner Park”) and Verizon Wireless (“Verizon”) is installing antenna nodes within various buildings located at the Fonner Park/State Fair site in an effort to improve cellular communications and data access at that location, especially during time when heavy wireless demands are experienced. As part of this project, Verizon seeks to install antenna nodes within the Heartland Events Center building. Because of the City’s legal interests in the facility, Verizon is asking that the City enter into the execution of a licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement. This agreement, if approved by the parties, would grant to Verizon the authority to install antenna nodes in the Heartland Event Center building.

Discussion

The Heartland Events Center building and the real estate upon which it is located is owned by Fonner Park and leased to the City under the terms of a Lease Purchase Agreement whereby the City will receive title to the property following payment of the bonds issued to finance construction of the building. The bonds are expected to be paid and redeemed in full on or before December 31, 2024. During the time the building bonds are outstanding, Fonner contracted to manage the facility. Under the terms of the management contract, Fonner is entitled to receive all revenues from the general operations of the event center.

The proposed Fonner Park/Verizon License Agreement presented to the City would terminate on December 31, 2024 if not sooner. Verizon will pay an annual rental fee of \$1,800 per node in addition to \$1,500 per year for electric power provided by Fonner. Because of the City’s legal interests in the facility, Verizon is asking that the City enter

into the execution of the licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement

Alternatives

The Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution whereby the City enter into the execution of the licensing agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement.
2. Disapprove or /Deny the resolution.
3. Modify the resolution to meet the needs of the City Council.
4. Table the issue.

Recommendation

City Administration recommends that the Council approve the resolution.

Sample Motion

Move to approve the resolution authorizing execution of the licensing agreement between the Hall County Livestock Improvement Association and Verizon Wireless.

LICENSE AGREEMENT

This License Agreement (the "**Agreement**") made this ____ day of _____, 20__ between **Fonner Park Exposition and Events Center, Inc.**, with its principal offices located at _____, Grand Island, Nebraska 68801, hereinafter designated **LICENSOR** and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated **LICENSEE**. LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "**Party**."

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** LICENSOR hereby licenses to LICENSEE certain space in the building located at _____ (the "**Building**"), the underlying real property of which is legally described on **Exhibit A**, attached hereto and made a part hereof (the Building and the underlying real property are hereinafter sometimes collectively referred to as the "**Property**"), for the installation, operation and maintenance of communications equipment. The space licensed to LICENSEE shall include space inside the Building sufficient for the installation, operation and maintenance of antennas (the "**Antenna Space**"); together with such additional space within the Building for the installation, operation and maintenance of wires, cables, conduits and pipes (the "**Cabling Space**") running between and among the Antenna Space and to all necessary electrical and telephone utility sources located within the Building or on the Property; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property and in and through the Building to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of LICENSEE's communications facility (the "**Rights of Way**"). The Antenna Space, Cabling Space, and Rights of Way are hereinafter collectively referred to as the "**Premises**" and are as shown on **Exhibit B** attached hereto and made a part hereof. In the event there are not sufficient electric and telephone, cable or fiber utility sources located within the Building or on the Property, LICENSOR agrees to grant LICENSEE or the local utility provider the right to install such utilities on, over and/or under the Property and through the Building necessary for LICENSEE to operate its communications facility, provided the location of such utilities shall be as reasonably designated by LICENSOR. The Parties acknowledge and agree that LICENSEE's interests in the Premises granted hereunder may only be terminated pursuant to the express terms of this Agreement.

2. **CONDITION OF PROPERTY.** LICENSOR shall deliver the Premises to LICENSEE in a condition ready for LICENSEE's construction of its improvements and clean and free of debris. LICENSOR represents and warrants to LICENSEE that as of the Effective Date and continuing throughout the Term (as hereinafter defined): (a) the Building (including without limitation the roof, foundations, exterior walls, interior load bearing walls, and utility systems) is (i) in good condition, structurally sound, and free of any leakage; and (ii) the Property and Building are in compliance with all Laws (as defined in Paragraph 23 below), including any applicable building codes, regulations, or ordinances which may exist with regard to the Building, or any part thereof; and (b) the Property is free of all lead-based paint, asbestos or other hazardous substances, as such term may be defined under any applicable federal, state or local law. If a breach of the representations and warranties contained in this Paragraph 2 is

discovered at any time during the Term, LICENSOR shall, promptly after receipt of written notice from LICENSEE setting forth a description of such non-compliance, rectify same at LICENSOR's expense.

3. TERM; RENTAL.

This Agreement shall be effective as of the date of execution by both Parties (the "Effective Date"). The term shall commence on the first day of the month following the day that LICENSEE commences installation of the equipment on the Premises (the "Commencement Date") and shall terminate on December 31, 2024 (the "Term"). The rental payments shall commence on the Commencement Date and shall be due at a total annual rental of One Thousand Eight Hundred Dollars (\$1,800.00) for Node SC5, and One Thousand Eight Hundred Dollars (\$1,800.00) for Node SC6, to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to LICENSOR or to such other person, firm or place as LICENSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 17 below. LICENSOR and LICENSEE agree that they shall acknowledge in writing the Commencement Date and the initial rental payment may not actually be sent by LICENSEE until sixty (60) days after LICENSEE's receipt of the written acknowledgement from LICENSOR.

Upon agreement of the Parties, LICENSEE may pay rent by electronic funds transfer and in such event, LICENSOR agrees to provide to LICENSEE bank routing information for such purpose upon request of LICENSEE.

LICENSOR hereby agrees to provide to LICENSEE certain documentation (the "Rental Documentation") including without limitation: (i) documentation evidencing LICENSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a completed Internal Revenue Service Form W-9, or equivalent for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LICENSEE and within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LICENSOR shall provide to LICENSEE such Rental Documentation. All documentation shall be acceptable to LICENSEE in LICENSEE's reasonable discretion. Delivery of Rental Documentation to LICENSEE shall be a prerequisite for the payment of any rent by LICENSEE and notwithstanding anything to the contrary herein, LICENSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LICENSEE as provided herein.

Within thirty (30) days of a written request from LICENSEE, LICENSOR or any assignee(s) or transferee(s) of LICENSOR agrees to provide updated Rental Documentation. Delivery of Rental Documentation to LICENSEE shall be a prerequisite for the payment of any rent by LICENSEE to such party and notwithstanding anything to the contrary herein, LICENSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LICENSEE as provided herein.

4. ELECTRICAL. LICENSOR shall, at all times during the Term, provide electrical service and telephone service access within the Premises. Commencing on the Commencement Date in consideration for electrical service, LICENSEE shall pay \$1,500.00 per year to LICENSOR for Node SC5, and \$1,500.00 per year to LICENSOR for Node SC6. LICENSOR agrees and acknowledges that LICENSEE may not send the initial annual electrical payment until sixty (60) days after LICENSEE's receipt of the written acknowledgement referenced in paragraph 3 herein.

LICENSEE shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LICENSOR. LICENSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

5. Reserved for Future Use

6. USE; GOVERNMENTAL APPROVALS. LICENSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. LICENSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "**Governmental Approvals**") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis which will permit LICENSEE use of the Premises as set forth above. LICENSOR shall cooperate with LICENSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LICENSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LICENSEE determines that such Governmental Approvals may not be obtained in a timely manner, (iv) LICENSEE determines that the Premises is no longer technically compatible for its use; or (v) LICENSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LICENSEE shall have the right to terminate this Agreement. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the notice provisions set forth in Paragraph 17 and shall be effective upon the mailing of such notice by LICENSEE, or upon such later date as designated by LICENSEE. All rentals paid to said termination date shall be retained by LICENSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LICENSEE shall have no further obligations for the payment of rent to LICENSOR.

Any rights hereunder shall in all events be subject to the requirements of that Lease Purchase Agreement dated October 9, 2001 (the "**Original Agreement**"), by and between the City of Grand Island, Nebraska (the "**City**") and Fonner Park Exposition and Events Center, Inc., as amended and supplemented by that Addendum to the Lease Purchase Agreement dated August 26, 2003 (the "**First Addendum**") by and between said parties, as further amended and supplemented by that Second Addendum to Lease Purchase Agreement dated as of December 1, 2004 (the "**Second Addendum**") and, including but not limited to, requirements for cancellation under Rev. Proc. 82-26 and, specifically, the requirement that the City have the right to obtain unencumbered fee title to the Project (including additions thereto) and exclusive possession of the Project.

7. INDEMNIFICATION. Subject to Paragraph 8, below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its

employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

8. INSURANCE.

a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LICENSOR and LICENSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property. LICENSOR and LICENSEE each agree that it will include the other Party as an additional insured, as their interests may appear under this Agreement.

9. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 7 and 21, 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.

10. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LICENSEE is not in default hereunder beyond applicable notice and cure periods, LICENSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LICENSOR.

11. INTERFERENCE. LICENSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LICENSOR or other licensees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LICENSEE's equipment causes such interference, and after LICENSOR has notified LICENSEE of such interference by a written communication and a call to LICENSEE's Network Operations Center [at (800) 264-6620/(800) 621-2622], LICENSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LICENSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LICENSOR be entitled to terminate this Agreement or relocate the equipment as long as LICENSEE is making a good faith effort to remedy the interference issue. LICENSOR agrees that LICENSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LICENSEE. The Parties acknowledge that there will not be an adequate remedy at law for

noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

12. REMOVAL AT END OF TERM. LICENSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LICENSEE shall remain the personal property of LICENSEE and LICENSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LICENSEE to remain on the Premises after termination of this Agreement, LICENSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

13. RIGHT OF FIRST REFUSAL (COMMUNICATIONS EASEMENT). If LICENSOR elects, during the Term to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LICENSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LICENSEE shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If LICENSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LICENSOR, LICENSOR may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

14. RIGHTS UPON SALE. Should LICENSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Building thereon to a purchaser other than LICENSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LICENSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LICENSEE's rights hereunder under the terms of this Agreement. In the event that LICENSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of this Agreement whereby the third party agrees in writing to assume all obligations of LICENSOR under this Agreement, then LICENSOR shall not be released from its obligations to LICENSEE under this Agreement, and LICENSEE shall have the right to look to LICENSOR and the third party for the full performance of this Agreement.

15. QUIET ENJOYMENT AND REPRESENTATIONS. LICENSOR covenants that LICENSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LICENSOR represents and warrants to LICENSEE as of the execution date of this Agreement, and covenants during the Term that LICENSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LICENSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LICENSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LICENSEE as set forth above.

16. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LICENSEE without any approval or consent of the LICENSOR to the LICENSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LICENSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LICENSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LICENSEE or transfer upon partnership or corporate dissolution of LICENSEE shall constitute an assignment hereunder.

17. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR: Fonner Park Exposition and Events Center, Inc.
Attention: _____

Grand Island, Nebraska 68801

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

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. RECORDING. LICENSOR agrees to execute a Memorandum of this Agreement which LICENSEE may record with the appropriate recording officer. The date set forth in the Memorandum of License is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

19. DEFAULT. In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this

Agreement if LICENSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LICENSOR if the failure to perform such an obligation interferes with LICENSEE's ability to conduct its business in the Building; provided, however, that if the nature of LICENSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

20. REMEDIES. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LICENSEE undertakes any such performance on LICENSOR's behalf and LICENSOR does not pay LICENSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LICENSEE may offset the full undisputed amount due against all fees due and owing to LICENSOR under this Agreement until the full undisputed amount is fully reimbursed to LICENSEE.

21. ENVIRONMENTAL.

a. LICENSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Building or Property, unless such conditions or concerns are caused by the specific activities of LICENSEE in the Premises.

b. LICENSOR shall hold LICENSEE harmless and indemnify LICENSEE from and assume all duties, responsibility and liability at LICENSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LICENSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Building or Property or activities conducted thereon, unless such environmental conditions are caused by LICENSEE.

c. LICENSEE shall hold LICENSOR harmless and indemnify LICENSOR from and assume all duties, responsibility and liability at LICENSEE's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation,

investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, to the extent that such non-compliance results from conditions caused by LICENSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, to the extent that such environmental conditions are caused by LICENSEE.

22. CASUALTY. In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations at the Premises for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LICENSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's use of the Premises is impaired.

23. APPLICABLE LAWS. During the Term, LICENSOR shall maintain the Property, the Building, Building systems, common areas of the Building, and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LICENSEE shall, in respect to the condition of the Premises and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE in the Premises. It shall be LICENSOR's obligation to comply with all Laws relating to the Building in general, without regard to specific use (including, without limitation, modifications required to enable LICENSEE to obtain all necessary building permits).

24. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. This Agreement and the performance thereof shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law

rules. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of that Party has the full right, power and authority to enter into and execute this Agreement on that Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

25. RELOCATION. If LICENSOR determines that the Building, and/or other improvements and/or facilities on which LICENSEE's Premises are located, must be taken out of service temporarily for maintenance, repair or replacement; or if the Building and/or other improvement and/or facility on which LICENSEE's Premises are located is to be permanently removed or relocated, LICENSOR may require LICENSEE to relocate its equipment to an alternate location upon the following terms and conditions:

(a) LICENSOR shall give LICENSEE at least sixty (60) days written notice prior to requiring LICENSEE to relocate from the Premises;

(b) LICENSOR shall make a good faith effort to identify all viable locations in the vicinity of the Premises to be relocated, and the Parties shall mutually agree on an alternate location for LICENSEE's Premises (the "**Alternate Premises**");

(c) LICENSEE will pay all costs incurred for relocating LICENSEE's equipment to the Alternate Premises;

(d) LICENSOR shall provide documentation or other information, if it has any, to assist LICENSEE in obtaining all of the certificates, permits and other approvals that may be required by any Federal, State or other authorities which will permit LICENSEE's use of the Alternate Premises;

(e) LICENSEE shall be allowed, if necessary in LICENSEE's reasonable discretion, to place a temporary installation in a location approved by LICENSOR during a temporary relocation and, upon completion of any maintenance, repair or similar work by LICENSOR, LICENSEE will be permitted to return to its original Premises from the temporary location; and

(f) If the relocation to the Alternate Premises will be a permanent relocation, the Parties shall amend this Agreement to accurately reflect the location of the Alternate Premises.

[Remainder of Page Intentionally Left Blank]

SITE NAME: NE07 Fonner Park SC5 / 402027
SITE NAME: NE07 Fonner Park SC6 - 402028

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

LICENSOR:

Fonner Park Exposition and Events Center, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

LICENSEE:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By: _____

Printed Name: _____

Title: _____

Date: _____

The City enters into the execution of this Agreement for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under this Agreement.

City of Grand Island, Nebraska

By: _____

Printed Name: _____

Title: _____

Date: _____

SITE NAME: NE07 Fonner Park SC5 / 402027
SITE NAME: NE07 Fonner Park SC6 - 402028

EXHIBIT A

PROPERTY

Situated in the County of Hall, State of Nebraska:

Lot One (1), Heartland Event Center First Subdivision to the City of Grand Island, Hall County, Nebraska.

Tax ID No: 400424215

SITE NAME: NE07 Fonner Park SC5 / 402027
SITE NAME: NE07 Fonner Park SC6 - 402028

EXHIBIT B

SITE PLAN OF ANTENNA SPACE AND CABLING SPACE

See Attached

RESOLUTION 2016-172

WHEREAS, through a master license agreement between the Hall County Livestock Improvement Association (“Fonner Park”) and Verizon Wireless LLC (“Verizon”), Verizon is installing antenna nodes within various buildings located at the Fonner Park/State Fair site in an effort to improve cellular communications and data access at that location; and

WHEREAS, the Heartland Events Center building and the real estate upon which it is located (the “facility”) is owned by Fonner Park and leased to the City of Grand Island (“City”) under the terms of a Lease Purchase Agreement whereby the City will receive title to the facility following payment of the bonds issued to finance construction of the building; and

WHEREAS, the building bonds are expected to be paid and redeemed in full on or before December 31, 2024; and

WHEREAS, for such time as the building bonds are outstanding, Fonner is contracted to manage the facility under the terms of a management contract with the City; and

WHEREAS, pursuant to the terms of the management contract, Fonner is entitled to receive all revenues from the general operations of the facility; and

WHEREAS, the proposed license agreement between Fonner Park and Verizon would terminate on December 31, 2024 if not sooner; and

WHEREAS, Verizon will pay an annual rental fee to Fonner Park and pay compensation for electric power provided by Fonner Park; and

WHEREAS, due to the City’s legal interests in the Heartland Event Center building, Verizon is requesting that the City enter into the execution of the licensing agreement between Fonner Park and Verizon for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND that execution of the licensing agreement between Fonner Park Exposition and Events Center, Inc. and Verizon Wireless, LLC for placement of wireless antenna nodes within the Heartland Events Center building should be, and hereby is, approved for the sole purpose of acknowledging to the terms, conditions, provisions and rights granted under the agreement as presented to the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, July 12, 2016.

Jeremy L. Jensen, Mayor

Attest:

Nicki Stoltenberg, Assistant to the City Administrator