



City of Grand Island

Tuesday, October 10, 2017

Council Session

Item G-17

#2017-281 - Approving Small Cell License and Pole Attachment Agreement with Verizon Wireless

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: October 10, 2017

Subject: Resolution and Proposed Agreement with Verizon Wireless, LLC – Sky Park Road and Baron Lane

Presenter(s): Jerry Janulewicz, City Attorney

Background

Verizon Wireless, LLC, a limited liability registered to do business in Nebraska, has applied for approval to place a wireless antenna facility on a new city light pole located at the intersection of Sky Park Road and Baron Lane. The agreement follows the basic format of agreements previously approved by council, which allow private attachments to city's utility poles, with some specific changes to this agreement that were the result of negotiations between the Verizon Wireless, LLC and city's legal and utilities departments. The terms of the agreement are similar to the agreement approved by Council in August, 2017.

Discussion

The proposed agreement includes a five-year term and provides that its attachments to the pole must meet safety and equipment requirements of the Utilities Department. Any additional attachments on cities poles will require separate applications from and agreements with Verizon Wireless.

Council is advised that the trend in wireless communications is toward smaller antennas, sometimes referred to as micro cells and distributed antenna systems, for both data backhaul and mobile voice/data services. This trend is fueled by ever-increasing demands for wireless access as well as the industry move toward 5G service, which will be needed to support new technologies such as autonomous cars and the "internet of things." Thus, pole attachment agreements with Verizon, Mobilitie, and others will become more commonplace.

Alternatives

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

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the resolution.

Sample Motion

Move to approve the resolution.

SMALL CELL LICENSE AND POLE ATTACHMENT AGREEMENT

THIS SMALL CELL LICENSE AND POLE ATTACHMENT AGREEMENT (the "Agreement") is dated as of _____, 20____ (the "Effective Date"), and entered into by and between the City of Grand Island, a political subdivision of the State of Nebraska (the "LICENSOR"), and Verizon Wireless (VAW) LLC, a Delaware limited liability company, d/b/a Verizon Wireless ("LICENSEE").

Recitals

A. WHEREAS, the LICENSOR is the owner of a Pole (as defined in §1.10, below) located in the Right-of-Way (as defined in §1.11 below) at the southwest corner of the intersection of Baron Lane and Sky Park Road, in the City of Grand Island, Nebraska; and

B. WHEREAS, Verizon Wireless (VAW) LLC, a Delaware limited liability company d/b/a Verizon Wireless, is duly authorized to transact business within the State of Nebraska; and

C. WHEREAS, LICENSEE desires to use space on LICENSOR's Pole located within said Right-of-Way for construction, operation and maintenance of its telecommunications antenna and associated equipment serving LICENSEE's wireless customers and utilizing Equipment (as defined in §1.6, below) permitted by the Federal Communications Commission ("FCC") and in accordance with FCC rules and regulations; and

D. WHEREAS, LICENSEE is willing to compensate the LICENSOR in exchange for a grant and right to use and physically occupy portions of LICENSOR's Pole located in said Right-of-Way.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. **DEFINITIONS.** The following definitions shall apply generally to the provisions of this Agreement:

1.1 *Affiliate.* Affiliate means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in LICENSEE; (b) each person or entity in which LICENSEE has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly or indirectly, is controlled by a third party which also directly or indirectly controls LICENSEE. An "Affiliate" shall in no event mean any creditor of LICENSEE solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, LICENSEE.

1.2 Assignment or Transfer. "Assignment" or "Transfer" means any transaction in which the rights and/or obligations held by LICENSEE under this Agreement are transferred, directly or indirectly, to a party other than an Affiliate. An "Assignment" shall not include a mortgage, pledge or other encumbrance as security for money owed.

1.3 City. "City" means the City of Grand Island, a municipality under the laws of the State of Nebraska.

1.4 Commence Installation. "Commence Installation" shall mean the date that LICENSEE commences to install its Equipment on LICENSOR'S Pole.

1.5 Commence Operation. "Commence Operation" shall mean the date that Equipment is installed and operational by LICENSEE pursuant to this Agreement.

1.6 Equipment. "Equipment" means the equipment cabinets, antennae, utilities and fiber optic cables, wires, and related equipment, as described or depicted in Attachment A hereto, that comprise a Small Cell installation.

1.7 Information Service. "Information Service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, as the same may evolve over time.

1.8 Laws. "Laws" means any and all validly enacted and applicable statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the LICENSOR or other governmental agency having joint or several jurisdiction over the parties to this Agreement as such laws may be amended from time to time.

1.9 Network. "Network" or collectively "Networks" means the telecommunication network operated by LICENSEE to serve its customers.

1.10 Pole. "Pole" shall mean the new light pole to be installed and owned by the LICENSOR, the location of which is described or depicted in Attachment B hereto together with lighting fixtures and electroliers located upon or attached thereto.

1.11 Right-of-Way. "Right-of-Way" or "ROW" means public property at the location described or depicted in Attachment B, including air space, dedicated, granted, held, or prescriptively used, or as authorized by patent of the United States of America, for LICENSOR's public street and public utility purposes, except as limited by any underlying grant, including rights-of-way granted by the United States Bureau of Land Management, United States Bureau of Reclamation or the Nebraska Department of Roads.

1.12 *Small Cell.* “Small Cell” shall mean the Equipment attached to LICENSOR’S Pole that comprises part of the Network operated by LICENSEE for the provision of Telecommunications Services.

1.13 *Telecommunications Services.* “Telecommunications Services” or “Services” has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53) or any other use authorized by and licensed to LICENSEE by the FCC.

2. TERM. The initial term of this Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the first day of the month following the date LICENSEE has Commenced Installation of its Equipment on the Pole (the “Agreement Commencement Date”) and ending on the fifth anniversary thereof, unless sooner terminated as stated herein. LICENSOR and LICENSEE shall acknowledge in writing the Agreement Commencement Date (the “Acknowledgement”). This Agreement shall be automatically renewed for one (1) successive five (5) year renewal term (a “Renewal Term”), unless LICENSOR notifies the LICENSEE in writing of LICENSOR’s intent not to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term. The Initial Term and Renewal Term shall be collectively referred to herein as the “Term.”

3. REPRESENTATION CONCERNING SERVICES; TERMINATION WITHOUT CAUSE. At any time that LICENSEE ceases to operate as a provider of Telecommunications Services under Federal law, the LICENSOR shall have the option, in its sole discretion and upon six months’ written notice to LICENSEE, to terminate this Agreement and to require the removal of LICENSEE’s Equipment from the ROW and Pole, including the cost of any site remediation, at no cost to the LICENSOR, without any liability to LICENSEE related directly or indirectly to such termination.

4. SCOPE OF AGREEMENT. Any and all rights expressly granted to LICENSEE under this Agreement, which shall be exercised at LICENSEE’s sole cost and expense, shall be subject to the prior and continuing right of the LICENSOR under applicable Laws to use any and all parts of the ROW exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW as of the date of this Agreement. It is the intent of the parties that this Agreement conform in all respects to the Laws, particularly those relating to the access and use of Rights-of-Way by Telecommunications Service providers, including, without limitation, those Telecommunications Service providers utilizing Small Cell technology and small wireless facilities. No provision of this Agreement shall apply to any circumstance in which such application shall be unlawful under superseding federal or state law.

4.1 Attachment to Pole. LICENSEE will submit to LICENSOR’s Public Works Director and Utilities Director for approval a proposed design for the proposed Small Cell installation that will include Equipment and any new Pole to be installed by LICENSOR.

4.1.1 Subject to the conditions herein, the LICENSOR hereby authorizes and permits LICENSEE to enter upon the ROW, and to locate, place, attach, install,

operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on the Pole and in the ROW for the purposes of operating the Small Cell equipment in conjunction with the Network and providing Telecommunications Services.

4.1.2 LICENSEE shall power its Equipment by using a separate, metered power source that services LICENSEE'S equipment. All electrical work and installations related to electric power shall be performed by a licensed contractor that is approved by the LICENSOR and in a manner that is approved by the LICENSOR. LICENSEE's metered power consumption shall be billed monthly directly by LICENSOR to LICENSEE, LICENSEE shall pay LICENSOR directly for its power consumption. All invoices for power consumption shall be sent by LICENSOR to LICENSEE at M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, or sent by electronic delivery by email to livebills@ecova.com, or such other physical or email address as directed by LICENSEE in writing, and LICENSEE shall pay the LICENSOR within thirty (30) days after receipt of such invoice. 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 to the Pole), a temporary emergency power source, and all related equipment and appurtenances within or adjacent to the Pole to the extent LICENSOR has the authority to permit the installation of a temporary emergency power source. Such temporary emergency power installation and power sources shall be in compliance with all applicable Laws. Notwithstanding the foregoing, no interruption or discontinuance of such electrical power will render LICENSOR liable to LICENSEE for damages or relieve LICENSEE of any of its obligations hereunder.

4.1.3 An application for the attachment of Equipment to the Pole may only be denied if the proposed Equipment does not meet applicable Laws including those related to telecommunications facilities, construction in public rights-of-way, building codes, electrical codes, or related standards. LICENSOR shall document the basis for any denial, including the specific provisions of the Laws on which the denial was based, and send the documentation to the LICENSEE on or before the day that it denies an application. LICENSEE may cure any deficiencies identified by the LICENSOR and resubmit an application within thirty (30) days of the date of any denial without paying an additional application fee.

4.1.4 If the Pole is at any time structurally inadequate to accommodate LICENSEE's Equipment, at its sole election LICENSEE shall either terminate this Agreement upon written notice to LICENSOR or, at its sole cost and expense, reimburse LICENSOR for the cost of the acquisition and installation of a replacement Pole (a "Replacement Pole") with one that is acceptable to and approved by the LICENSOR.

4.1.5 In the event of an emergency or to protect the public health or safety, prior to the LICENSOR accessing or performing any work on the Municipal Facility on

which LICENSEE has installed Equipment, the LICENSOR may require LICENSEE to deactivate such Equipment if any of LICENSOR's employees or agents must move closer to the Equipment than the recommended one foot minimum distance. In such case, LICENSOR will contact LICENSEE at the contact telephone number referenced in §14.3 herein to request immediate deactivation.

4.2 Access. Subject to §6.10 of this Agreement, the LICENSOR hereby authorizes and permits LICENSEE to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace the Equipment in or on the Pole.

4.3 No Interference. LICENSEE in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the LICENSOR, electroliers, cable television, location monitoring services, public safety and other then existing telecommunications equipment, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement. In the event any LICENSEE Equipment causes such interference, and after LICENSOR has notified LICENSEE of the interference by a written communication and a call to LICENSEE's Network Operations Center ("NOC") (at (800) 264-6620), 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 the interfering equipment and later powering up the interfering equipment for intermittent testing. The LICENSOR agrees that the any other tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW within three hundred feet (300') of the LICENSEE Equipment 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.

4.4 Permits; Default. Whenever LICENSEE is in default of this Agreement, after notice and applicable cure periods provided under §11, in any of its obligations under this Agreement, the LICENSOR may elect to terminate this Agreement.

4.5 Compliance with Laws. LICENSEE shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Agreement.

4.6 No Authorization to Provide Other Services. LICENSEE represents, warrants and covenants that its Equipment installed pursuant to this Agreement will be utilized solely for providing the Information Services and Telecommunications Services identified herein and provided over the Network, and LICENSEE is not authorized to and shall not use its Equipment to offer or provide any other services not specified herein.

4.7 Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to LICENSEE under this Agreement shall be non-exclusive, and shall be subject and subordinate to (1) the continuing right of the LICENSOR to use, and to allow any other person or persons to use, any and all parts of the ROW or Pole, exclusively or concurrently with any other person or persons; (2) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the ROW or Pole now or at any time during the term of this Agreement, including, without limitation any Encumbrances granted, created or allowed by the LICENSOR at any time; and (3) LICENSOR's municipal codes and fees as then in effect.

5. COMPENSATION. LICENSEE shall be solely responsible for the payment of all lawful fees in connection with LICENSEE's performance under this Agreement, including those set forth below.

5.1 Attachment Fee. In order to compensate the LICENSOR for LICENSEE's entry upon and deployment of Equipment on the Pole, LICENSEE shall at the commencement this Agreement pay to the LICENSOR, and on an annual basis thereafter, an annual pole attachment fee at the rate and amount as set annually pursuant to LICENSOR's Fee Schedule Ordinance. For the period of October 1, 2016 to September 30, 2017, or any part thereof, the annual pole attachment fee for the Pole shall be Six Dollars (\$6.00) (the "Rent").

LICENSEE shall make the first payment of Rent within sixty (60) days of the full execution of the Acknowledgement. Thereafter, Rent at the rate set by LICENSOR'S then current Fee Schedule Ordinance shall be paid on or before October 1 of each year during the Term; provided, however, LICENSOR shall provide LICENSEE with at least ninety (90) days prior written notice of any adjustment to Rent pursuant to the Fee Schedule Ordinance, delivered in accordance with §10.1 of this Agreement. In the event such notice is delivered less than ninety (90) days before October 1 and LICENSEE's annual Rent payment is not made at the adjusted amount, LICENSEE shall pay the difference within sixty (60) days of LICENSEE's receipt of such notice, or shall be entitled to a credit against the next annual Rent payment, as applicable. Absent such notice, LICENSEE shall pay Rent for the then-current year in the same amount as the Rent payable for the immediately preceding year.

For any party to whom Rent payments are to be made, LICENSOR or any successor in interest of LICENSOR hereby agrees to provide to LICENSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms, if required; and (iii) other documentation to verify LICENSOR's or such other party's right to receive Rent as is reasonably requested by LICENSEE. Rent shall accrue in accordance with this Agreement, but LICENSEE shall have no obligation to deliver Rent payments until the requested documentation has been received by LICENSEE. Upon receipt of the requested documentation, LICENSEE shall deliver the accrued Rent payments as directed by LICENSOR.

5.2 Business License Fee/Other Fees/Rent Tax. The Attachment Fee in §5.1 of this §5 includes any fees for access to the ROW, use of the ROW, and attachments of the Small Cell to the Pole. The Attachment Fee does not include license or occupation tax imposed by the LICENSOR upon telecommunication providers as authorized by Nebraska statutes, nor other fees or taxes that may be levied or imposed under applicable state or federal law.

5.3 Payment. The Rent shall be paid by check made payable to LICENSOR and mailed or delivered to the LICENSOR at the address provided for in §10.1 below. The place and time of payment may be changed at any time by LICENSOR upon thirty (30) days' written notice to LICENSEE. Mailed payments shall be deemed paid upon the date such payment is officially postmarked by the United States Postal Service. If postmarks are illegible to read, the payment shall be deemed paid upon actual receipt.

Notwithstanding the foregoing, upon agreement of the parties, LICENSEE shall pay Rent by electronic funds transfer in the event LICENSOR provides to LICENSEE bank routing information for such purpose.

5.4 Delinquent Payment. If LICENSEE fails to pay any amounts due pursuant to this Agreement within forty-five (45) days from the due date, LICENSEE will pay, in addition to the unpaid fees, a sum of money equal to two percent (2%) of the amount due, including penalties and accrued interest, for each month and/or fraction thereof during which the payment is due and unpaid.

5.5 Additional Remedies. The remedy provisions set forth in §5.4 above are not exclusive, and do not preclude the LICENSOR from pursuing any other or additional remedy in the event that payments become overdue by more than forty-five (45) days.

6. CONSTRUCTION. LICENSEE shall comply with all Laws related to the construction, installation, operation, maintenance, and control of LICENSEE's Equipment installed in the ROW and on the Pole. Except as otherwise provided herein, LICENSEE shall not attach, install, maintain, or operate any Equipment in or on the ROW and/or on the Pole without the prior written approval of LICENSOR's Public Works Director and Utilities Director.

6.1 Commencement of Installation and Operation. LICENSEE shall Commence Installation of its Small Cell approved by the LICENSOR no later than eighteen (18) months after the LICENSOR'S issuance of its written approval for LICENSEE to Commence Installation, and shall Commence Operation no later than six (6) months after LICENSEE Commences Installation, which such dates may be delayed due to any force majeure event. Failure of LICENSEE to Commence Installation or Commence Operation of the Small Cell as provided above shall permit LICENSOR to terminate this Agreement upon ninety (90) days notice to LICENSEE unless within such ninety (90) day period, LICENSEE shall Commence Installation or Commence Operation, as applicable. Notwithstanding the foregoing, LICENSEE's obligations under this §6.1 shall be

conditioned upon LICENSEE's completion of its due diligence with regard to the Small Cell location and/or Municipal Facility.

6.2 Obtaining Required Permits. The attachment, installation, or location of the Equipment in the ROW may require governmental permits, such as excavation permits, building permits, and traffic control permits. Subject to the limitations of §5.2, LICENSEE shall apply for the appropriate permits and pay any standard and customary permit fees.

6.3 Relocation and Displacement of Equipment. LICENSEE understands and acknowledges that LICENSOR may require LICENSEE to relocate its Equipment installation. LICENSEE shall at LICENSOR's direction and upon one hundred eighty (180) days prior written notice to LICENSEE, relocate such Equipment at LICENSEE's sole cost and expense whenever LICENSOR reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a LICENSOR or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of LICENSOR-owned Poles, traffic signals, communications, or other Pole; or (c) to protect or preserve the public health or safety. If LICENSEE shall fail to relocate any Equipment as requested by the LICENSOR in accordance with the foregoing provision, LICENSOR shall be entitled to remove or relocate the Equipment at LICENSEE's sole cost and expense, without further notice to LICENSEE. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. To the extent the LICENSOR has actual knowledge thereof, the LICENSOR will attempt promptly to inform LICENSEE of the displacement or removal of the Pole. If the Pole is damaged or downed for any reason, and as a result is not able to safely hold the Equipment, the LICENSOR will have no obligation to repair or replace the Pole for the use of LICENSEE's Equipment. LICENSEE shall bear all risk of loss as a result of damaged or downed Pole pursuant to §6.8 below, and may choose to replace such Pole pursuant to the provisions of §4.1.4 above.

6.4 Relocations at LICENSEE's Request. In the event LICENSEE desires to relocate the Equipment from the Pole to another pole owned by LICENSOR, LICENSEE shall so advise LICENSOR. LICENSOR will promptly then advise LICENSEE of any alternative pole it would have available, if any, for use in accordance with and subject to the terms and conditions of this Agreement.

6.5 Damages Caused by LICENSEE. LICENSEE shall, at its sole cost and expense and to the satisfaction of the LICENSOR: (a) remove, repair or replace any of its Equipment that is damaged or becomes detached; and/or (b) repair any damage to ROW, Pole or other property, whether public or private, caused by LICENSEE, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of Equipment. If LICENSEE does not remove, repair or replace such damage to its Equipment or to ROW, Pole or other property, the LICENSOR shall have

the option, upon thirty (30) days' prior written notice to LICENSEE, to perform or cause to be performed the removal of the damaged Equipment, or the removal, repair or replacement of the ROW or Pole, on behalf of LICENSEE and shall charge LICENSEE for the actual costs incurred by the LICENSOR. If such damage causes a public health or safety emergency, as reasonably determined by the LICENSOR, the LICENSOR may immediately perform reasonable and necessary repair or removal work on behalf of LICENSEE and will notify LICENSEE as soon as practicable; provided, such repair work may only involve reattachment of LICENSEE's Equipment to a Pole or repair of the Pole itself, and shall not include any technical work on LICENSEE's Equipment. Upon the receipt of a demand for payment by the LICENSOR, LICENSEE shall within thirty (30) days of such receipt reimburse the LICENSOR for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

6.6 Changes in Equipment. If LICENSEE proposes to install Equipment which is different in any material way from the then-existing and approved Equipment, then LICENSEE shall first obtain the written approval for the use and installation of the unauthorized Equipment from LICENSOR's Public Works Director and Utilities Director. In addition to any other submittal requirements, and if requested by LICENSOR, LICENSEE shall provide "load" (structural) calculations for the Pole. Notwithstanding the foregoing, LICENSEE may modify its Equipment with like kind or similar Equipment without prior written approval of the LICENSOR.

6.7 Termination. LICENSEE shall have the right to terminate this Agreement on thirty (30) days notice to the LICENSOR. In the event of such termination, LICENSEE shall remove its Equipment in accordance with §6.8 below and LICENSOR shall retain any Rent paid to such date.

6.8 Removal of Equipment. Within sixty (60) days after the expiration or earlier termination of this Agreement, LICENSEE shall promptly, safely and carefully remove the Equipment from the Pole and ROW. Such obligation of LICENSEE shall survive the expiration or earlier termination of this Agreement. If LICENSEE fails to complete this removal work pursuant to this Section, then the LICENSOR, upon written notice to LICENSEE, shall have the right at the LICENSOR's sole election, but not the obligation, to perform this removal work and charge LICENSEE for the actual costs and expenses, including, without limitation, reasonable administrative costs. LICENSEE shall pay to the LICENSOR actual costs and expenses incurred by the LICENSOR in performing any removal work and any storage of LICENSEE's property after removal within thirty (30) days of the date of a written demand for this payment from the LICENSOR. After the LICENSOR receives the reimbursement payment from LICENSEE for the removal work performed by the LICENSOR, the LICENSOR shall promptly make available to LICENSEE the property belonging to LICENSEE and removed by the LICENSOR pursuant to this Section at no liability to the LICENSOR. If the LICENSOR does not receive reimbursement payment from LICENSEE within such thirty (30) days, or if LICENSOR does not elect to remove such items at the LICENSOR's cost after LICENSEE's failure to so remove pursuant to this Section, or if LICENSEE does not

remove LICENSEE's property within thirty (30) days of such property having been made available by the LICENSOR after LICENSEE's payment of removal reimbursement as described above, any items of LICENSEE's property remaining on or about the ROW, Pole, or stored by the LICENSOR after the LICENSOR's removal thereof may, at the LICENSOR's option, be deemed abandoned and the LICENSOR may dispose of such property in any manner by Law. Alternatively, the LICENSOR may elect to take title to abandoned property, provided that LICENSEE shall submit to the LICENSOR an instrument satisfactory to the LICENSOR transferring to the LICENSOR the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.9 Risk of Loss. LICENSEE acknowledges and agrees that LICENSEE, subject to the terms of this Agreement, bears all risks of loss or damage or relocation or replacement of its Equipment and materials installed in the ROW or on the Pole pursuant to this Agreement from any cause, and the LICENSOR shall not be liable for any cost of replacement or of repair to damaged Equipment, including, without limitation, damage caused by the LICENSOR's removal of the Equipment, except to the extent that such loss or damage was caused by the willful misconduct or negligence of the LICENSOR, including, without limitation, each of its elected officials, department directors, managers, officers, agents, employees, and contractors, subject to the limitation of liability provided in §7.2 below.

6.10 Access. Prior to LICENSEE accessing its Equipment for non-emergency purposes at any time, LICENSEE shall provide telephonic notice to the City of Grand Island, Utilities Department. In the event of an emergency at any time, LICENSEE will, if time permits, attempt to provide prior telephonic notice to the City of Grand Island Utilities Department. In the event LICENSEE is unable to provide such notice, LICENSEE will notify the City of Grand Island Utilities Department following such access.

7. INDEMNIFICATION AND WAIVER. LICENSEE agrees to indemnify, defend, protect, and hold harmless the LICENSOR, its commission members, officers, and employees from and against any and all claims, demands, losses, including Pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from LICENSEE's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the LICENSOR, its mayor, council members, officers, employees, agents, or contractors.

7.1 Waiver of Claims. LICENSEE waives any and all claims, demands, causes of action, and rights of any kind or nature it may assert against the LICENSOR its mayor, council members, officers, and employees on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Telecommunications Services or Information Services.

7.2 Limitation on Consequential Damages. 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.

8. SECURITY FOR PERFORMANCE. Before any construction begins in the ROW by LICENSEE, and if requested by LICENSOR, LICENSEE shall provide the LICENSOR with performance bonds, and if considered necessary by the LICENSOR, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the LICENSOR, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in Nebraska, and acceptable to the LICENSOR and shall be kept in place for the duration of the work.

9. INSURANCE. LICENSEE shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, contractual liability, personal injury and products completed operations; and Commercial Automobile Liability insurance covering all owned non-owned and hired vehicles with a limit of \$1,000,000 each accident for bodily injury and property damage. The Commercial General Liability insurance policy shall include the LICENSOR, its mayor, council members, officers, and employees as additional insured as respects any covered liability arising out of LICENSEE's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer LICENSEE shall use commercially reasonable efforts to provide the LICENSOR with thirty (30) days prior written notice of cancellation. LICENSEE shall be responsible for notifying the LICENSOR of such change or cancellation.

9.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, LICENSEE shall file with the LICENSOR the required certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that LICENSEE's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the LICENSOR may possess, including any self-insured retentions the LICENSOR may have; and any other insurance the LICENSOR does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

- (c) that LICENSEE's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the LICENSOR.

The certificate(s) of insurance with endorsements and notices shall be mailed to the LICENSOR at the address specified in §10.1 below.

9.2 Workers' Compensation Insurance. LICENSEE shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than \$1,000,000 and shall furnish the LICENSOR with a certificate showing proof of such coverage.

9.3 Insurer Criteria. Any insurance provider of LICENSEE shall be admitted and authorized to do business in the State of Nebraska and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "VII."

9.4 Severability of Interest. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

10. NOTICES.

10.1 Method and Delivery of Notices. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:

if to the LICENSOR:
City of Grand Island
Attention: Utilities Director
P.O. Box 1968
Grand Island, NE 68802

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

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of commercial courier, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

11. DEFAULT; CURE; REMEDIES; LIQUIDATED DAMAGES.

11.1 LICENSEE Default and Notification. Except for causes beyond the reasonable control of LICENSEE, if LICENSEE fails to comply with any of the conditions and obligations imposed hereunder, and if such failure continues for more than thirty (30) days after written demand from the LICENSOR to commence the correction of such noncompliance on the part of LICENSEE, the LICENSOR shall have the right to revoke and terminate this Agreement, in addition to any other rights or remedies set forth in this Agreement or provided by Law.

11.2 LICENSOR Default and Notification. Except for causes beyond the reasonable control of LICENSOR, if LICENSOR breaches any covenant or obligation of LICENSOR under this Agreement in any manner, and fails to cure such breach within thirty (30) days after receiving written notice from LICENSEE specifying the violation, then LICENSEE may enforce any and all of its rights and/or remedies provided under this Agreement.

11.3 Cure Period. If the nature of the violation is such that it cannot be fully cured within thirty (30) days due to circumstances not under the defaulting party's control, the period of time in which the defaulting party may cure the violation shall be extended for such additional time reasonably necessary to complete the cure, provided that: (a) the defaulting party has promptly begun to cure; and (b) the defaulting party is diligently pursuing its efforts to cure. The non-defaulting party may not maintain any action or effect any remedies for default against the defaulting party unless and until the defaulting party has failed to cure the breach within the time periods provided herein.

12. ASSIGNMENT. This Agreement shall not be assigned by LICENSEE without the express written consent of the LICENSOR, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of LICENSEE to an Affiliate or to any entity which acquires all or substantially all of LICENSEE's assets in the market defined by the FCC in which the ROW is located by reason of a merger, acquisition or other business reorganization (collectively, "Exempted Transfers") shall not require the consent of the LICENSOR.

13. RECORDS; AUDITS.

13.1 Records Required by Applicable Laws. LICENSEE will maintain complete records with respect to the Small Cell pursuant to all applicable Laws.

13.2 Additional Records. The LICENSOR may require such additional reasonable non-confidential information, records, and documents from LICENSEE from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement.

13.3 Production of Records. LICENSEE shall provide such records within thirty (30) days of a request by the LICENSOR for production of the same unless additional time is reasonably needed by LICENSEE, in which case, LICENSEE shall have such reasonable time as needed for the production of the same. If any person other than LICENSEE maintains records on LICENSEE's behalf, LICENSEE shall be responsible for making such records available to the LICENSOR for auditing purposes pursuant to this Section.

14. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

14.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

14.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

14.3 Contacting LICENSEE. LICENSEE shall be available to the staff employees of any LICENSOR department having jurisdiction over LICENSEE's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The LICENSOR may contact by telephone the LICENSEE network control center operator at telephone number (800) 264-6620 regarding such problems or complaints.

14.4 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Nebraska, without reference to its conflicts of law principles. Any litigation concerning this Agreement shall be conducted in either the State Courts located in Hall County, Nebraska, or the Federal District Court for the District of Nebraska, and each party consents to jurisdiction and venue in any such court.

14.5 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

14.6 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in §6.2

above. This Agreement shall not be revocable or terminable except as expressly permitted herein.

14.7 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.8 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. In witness whereof, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

14.9 Public Records. LICENSEE acknowledges that information submitted to the LICENSOR may be open to public inspection and copying as required under state law. LICENSEE may identify information, such as trade secrets, proprietary financial records, customer information or technical information, submitted to the LICENSOR as confidential. LICENSEE shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information prior to submitting such information to the LICENSOR. The LICENSOR shall treat any information so marked as confidential until the LICENSOR receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the LICENSOR shall provide LICENSEE with written notice of the request, including a copy of the request. LICENSEE shall have fifteen (15) working days within which to provide a written response to the LICENSOR, before the LICENSOR will disclose any of the requested confidential information. The LICENSOR retains the final discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

14.10 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

14.11 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the LICENSOR with respect to third parties shall remain as imposed by state law.

14.12 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

14.13 Effect of Acceptance. LICENSEE (a) accepts and agrees to comply with this Agreement and all applicable Laws; (b) has no basis, to its knowledge, to assert that this Agreement was not granted pursuant to processes and procedures consistent with applicable Laws; and (c) has no basis, to its knowledge, to assert any claim or allege in any claim or proceeding against the LICENSOR that any provision, condition or term of this Agreement was unreasonable or arbitrary, or was void or unlawful, as of the Effective Date.

14.14 Time is of the Essence. Time is of the essence with regard to the performance of all of LICENSEE's obligations under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate this _____ day of _____, 20____.

LICENSOR:
City of Grand Island

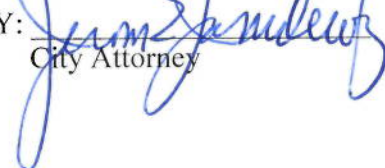
By: _____
Jeremy L. Jensen, Mayor

Date: _____

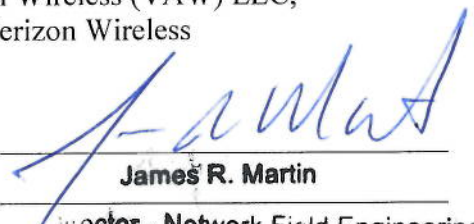
ATTEST:

RaNae Edwards, City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: 
City Attorney

LICENSEE:
Verizon Wireless (VAW) LLC,
d/b/a Verizon Wireless

By: 
Name: **James R. Martin**
Title: **Director - Network Field Engineering**
Date: 9/22/17

Exhibits to Small Cell License and Pole Attachment Agreement:
Attachment A – Equipment
Attachment B – Pole Location

ATTACHMENT A

Licensee Small Cell Equipment

- (1) Cantenna Antenna (JMA #CYL-QAP-2)
- (1) Antenna Mounting Kit
- (1) U-Guard from antenna to radio
- (1) Radio Unit (Ericsson RRU32 B66)
- (1) Power Converter
- (1) AC load center (Schneider DU221RB)
- (1) Meter base
- Fiber conduit from ground level to radio
- Power conduit from meter base to load center

Attachment A

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City of Grand Island -- Small Cell NE07 CNRA SC1 1 (GL# 412477)
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ATTACHMENT B

Site Plan

(See Attached)

Attachment B
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City of Grand Island -- Small Cell NE07 CNRA SC1 1 (GL# 412477)
CORE/0762186.2853/131822398.1

RESOLUTION 2017-281

WHEREAS, to improve cellular communications and data transmission in the area, Verizon Wireless LLC (“Verizon”) desires to install and maintain an wireless antenna facility on a new city light pole located at the intersection of Sky Park Road and Baron Lane; and

WHEREAS, pursuant to the terms of the proposed five-year license agreement, in consideration for a license granting permission for the placement, operation and maintenance of wireless facilities, City will receive a pole attachment fee at such amount as set by City Ordinance. Verizon will pay the cost of installing the light pole at the location and will pay for electric service at a metered rate.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND that the proposed license agreement between the City of Grand Island and Verizon Wireless, LLC for placement of a wireless antenna facility on a new city light pole located at the intersection of Sky Park Road and Baron Lane should be and the same is hereby approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 10, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 14, 2017	☐ City Attorney