

# **City of Scottsbluff, Nebraska**

**Monday, July 21, 2014**

**Regular Meeting**

## **Item Reports1**

**Council to consider a revised agreement with Verizon Wireless to lease city-owned property located at Highway 92 and County Road 19.**

**Staff Contact: Rick Kuckkahn, City Manager**

## LAND LEASE AGREEMENT

This Agreement ("Agreement"), made this \_\_\_\_ day of \_\_\_\_, 2014, between the City of Scottsbluff, Nebraska, a Nebraska municipal corporation, with its principal offices located at 2525 Circle Drive, Scottsbluff, Nebraska, 69361 hereinafter designated LESSOR and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. PREMISES. LESSOR hereby leases to LESSEE real estate containing 10,000 square feet of land space ("Land Space") located at Highway 92 & County Road 19, Scottsbluff, Scottsbluff County, Nebraska (the entirety of LESSOR's real property is referred to hereinafter as the Property) and substantially described in Exhibit "A" attached hereto, together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a thirty foot (30') wide right-of-way extending from the nearest public right-of-way, County Road 19, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along the Rights of Way and an eight foot (8') wide right of way ("Further Rights of Way") from the Land Space. The Land Space, Rights of Way and Further Rights of Way are hereinafter collectively referred to as the "Premises" [and legally described in attached Exhibit "A"](#).

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall describe the Premises leased under the Agreement. Cost for such work shall be borne by the LESSEE.

3. TERM; RENTAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Nine Thousand Six Hundred and 00/100 Dollars (\$9,600.00) to be paid in equal monthly installments of Eight Hundred and 00/100 Dollars (\$800.00) on the first day of the month, in advance, to LESSOR or to such other person, firm or place as LESSOR 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 23 below. The Agreement shall commence based upon the date LESSEE commences installation of the equipment on the Premises, or on the first day of December 2014, whichever occurs first. In the event the date of commencing installation of equipment is determinative and such date falls between the 1<sup>st</sup> and 15<sup>th</sup> of the month, the Agreement shall commence on the 1<sup>st</sup> of that month and if such date falls between the 16<sup>th</sup> and 31<sup>st</sup> of the month, then the Agreement shall commence on the 1<sup>st</sup> day of the

following month (either of the foregoing or December 1, 2014, if applicable, being the "Commencement Date"). LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date in the event the Commencement Date is based upon the date LESSEE commences installation of the equipment on the Premises. In the event the Commencement Date is the fixed date set forth above, there shall be no written acknowledgement required. LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until thirty (30) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and no written acknowledgement confirming the Commencement Date is required, LESSEE shall send to the LESSOR the rental payments for January 1 and February 1 by February 1, and if the Commencement Date is January 1 and a required written acknowledgement confirming the Commencement Date is dated January 14, LESSEE shall send to the LESSOR the rental payments for January 1 and February 1 by February 13.

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

b. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") necessary for LESSEE to comply with tax and information return reporting rules of the Internal Revenue Service ("IRS") or state and local withholding forms, in a form acceptable to LESSEE prior to execution of the Agreement by the parties, and at such other times as may be reasonably requested by LESSEE.

4. EXTENSIONS. This Agreement shall automatically be extended for three (3) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The annual rental shall increase on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the total annual rent for the previous lease year.

6. ADDITIONAL EXTENSIONS. If at the end of the third (3rd) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional one (1) year term shall be equal to the annual rental payable with respect to the immediately preceding term. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Premises which LESSOR demonstrates is the

result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Premises is located), including any increase in real estate taxes at the Premises which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSEE shall be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSEE at the Premises. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Premises.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE 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 LESSEE'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 satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's

exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. 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. The parties agree that upon any termination of the Agreement as identified herein, LESSEE shall continue to pay rent to LESSOR until such time that LESSEE has removed its equipment from the Premises in accordance with Paragraph 14 and 15 further discussed below.

9. INDEMNIFICATION. Subject to Paragraph 10 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.

10. INSURANCE.

LESSOR and LESSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance and third property liability with liability limits of not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 9 and 29, 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.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that six (6) months prior notice is given to LESSOR and LESSEE complies with Paragraph 8 and 14 herein.

13. INTERFERENCE. LESSEE 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 LESSOR. In the event any LESSEE equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will immediately take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to LESSEE powering down such equipment and later powering up such equipment for intermittent testing until any such interference is cured by LESSEE. The Parties agree that so long as LESSEE is making a good faith effort to remedy any such interference upon written notice from LESSOR and thereafter continuously and

diligently pursues the cure to completion, LESSEE shall not be deemed in default under this Paragraph. 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.

14. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) including footings up to six feet (6') below grade, equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term of the Agreement, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 33 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE 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.

15. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 14 herein. In the event LESSEE holds over in violation of Paragraph 14 and this Paragraph 15, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 14 shall be equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

16. INTENTIONALLY OMITTED.

17. INTENTIONALLY OMITTED.

18. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

19. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no liens, judgments or impediments of title on the Premises, or affecting LESSOR'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 LESSEE as set forth above.

20. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE

in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. 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 under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

21. GOVERNING LAW. 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.

22. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Premises is located by reason of a merger, acquisition or other business reorganization. LESSEE shall provide LESSOR with written notice of any sale, assignment or transfer of the Agreement to LESSEE's principal, affiliates, subsidiaries of its principal within thirty (30) days of any such assignment or transfer. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder. LESSEE may sublet the Premises within its sole discretion, upon notice to LESSOR. Any sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto.

23. 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):

LESSOR: City of Scottsbluff, Nebraska  
2525 Circle Drive  
Scottsbluff, Nebraska  
Attention: \_\_\_\_\_

LESSEE: Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road

Bedminster, New Jersey 07921  
Attention: Network Real Estate

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

24. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

25. INTENTIONALLY OMITTED.

26. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer.

27. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR 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 LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Premises; provided, however, that if the nature of LESSOR'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.

28. REMEDIES. 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. 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; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, due against all fees due and owing to LESSOR until the full undisputed amount, is fully reimbursed to LESSEE.

29. ENVIRONMENTAL.

a. LESSOR 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 Premises, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR'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 LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Premises or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

30. INTENTIONALLY OMITTED.

31. INTENTIONALLY OMITTED.

32. SIGNATURE AUTHORITY. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such 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.

33. APPLICABLE LAWS. During the Term of the Agreement, LESSOR shall maintain the Property 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"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

34. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

35. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

[SIGNATURE PAGE TO FOLLOW]

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

**LESSOR:**

**City of Scottsbluff, Nebraska, a municipal corporation**

**ATTEST:**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Name: Randy Meininger  
Its: Mayor  
Date: \_\_\_\_\_

**LESSEE:**

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

\_\_\_\_\_  
WITNESS  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: Lynn Ramsey  
Its: Area Vice President Network  
Date: \_\_\_\_\_

## Exhibit "A"

### Legal Description of the Premises

(See Attached Site Sketch of Premises)

PROPERTY LEGAL DESCRIPTION PER WARRANTY DEED, RECORDED AS DOCUMENT NO. 2006-3563 IN THE SCOTTSBLUFF COUNTY REGISTER OF DEEDS OFFICE ON JUNE 6TH, 2006.

THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTSBLUFF COUNTY, NEBRASKA, EXCEPTING THEREFROM THAT PARCEL DESCRIBED IN A RETURN OF APPRAISERS WHICH WAS FILED MAY 13, 1997 AND APPEARS OF RECORD IN BOOK 212 OF DEEDS AT PAGE 716 IN THE OFFICE OF THE REGISTER OF DEEDS OF SCOTTSBLUFF COUNTY NEBRASKA AND EXCEPTING FURTHER THE FOLLOWING DESCRIBED REAL ESTATE:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTSBLUFF COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 21, THENCE SOUTHERLY ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 21, ON AN ASSUMED BEARING OF 500° 04' 56"E, A DISTANCE OF 1417.52 FEET, TO THE POINT OF BEGINNING, THENCE CONTINUING SOUTHERLY ON THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 21, BEARING 500° 04' 56"E, A DISTANCE OF 205.71 FEET, THENCE BEARING 509° 55' 04"W, A DISTANCE OF 205.71 FEET, THENCE BEARING N00° 04' 56"W, A DISTANCE OF 177.46 FEET, THENCE BEARING N49° 26' 43"W, A DISTANCE OF 1052.06 FEET, TO THE POINT OF INTERSECTION WITH THE SOUTHEASTERLY LINE OF A STRIP OF LAND AS SHOWN ON SURVEY PLAT DATED AUGUST 4, 1998, BY DONALD BRUSH, L.S. 511, THENCE BEARING N40° 33' 17"E, ON SAID SOUTHEASTERLY LINE OF STRIP OF LAND, A DISTANCE OF 25.00 FEET, THENCE BEARING S49° 26' 43"E, A DISTANCE OF 1034.01 FEET, THENCE BEARING N09° 55' 04"E, A DISTANCE OF 206.73 FEET, TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 1.59 ACRES, MORE OR LESS.

#### PROPOSED 100' X 100' LAND SPACE DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REDAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21, THENCE S02° 07' 48"W, 889.37 FEET ALONG THE WEST LINE OF SAID SECTION 21, THENCE S67° 31' 33"E, 37.36 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, THENCE S67° 31' 33"E, 100.00 FEET; THENCE S02° 28' 27"E, 100.00 FEET; THENCE N87° 31' 33"W, 100.00 FEET; THENCE N02° 28' 27"E, 100.00 FEET TO THE POINT OF BEGINNING. SAID LAND SPACE CONTAINS 10,000 SQUARE FEET OR 0.2 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

#### PROPOSED ACCESS RIGHT-OF-WAY DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REDAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21, THENCE S02° 07' 48"W, 925.37 FEET ALONG THE WEST LINE OF SAID SECTION 21, THENCE S67° 31' 33"E, 37.36 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" AND THE POINT OF BEGINNING, THENCE CONTINUE S67° 31' 33"E, 120.82 FEET TO THE BEGINNING OF A 14.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, ALONG SAID CURVE 21.89 FEET, THE CHORD OF WHICH BEARS N47° 28' 27"E, 19.80 FEET; THENCE N02° 28' 27"E, 102.00 FEET, THENCE S67° 31' 33"E, 18.00 FEET TO THE NORTHWEST CORNER OF THE PROPOSED LAND SPACE, THENCE S02° 28' 27"W, 100.00 FEET ALONG THE WEST LINE OF THE PROPOSED LAND SPACE, THENCE S67° 31' 33"E, 100.00 FEET ALONG THE SOUTH LINE OF THE PROPOSED LAND SPACE, THENCE S02° 28' 27"W, 30.00 FEET; THENCE N87° 31' 33"W, 249.75 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19"; THENCE N02° 19' 16"E, 14.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" TO THE POINT OF BEGINNING. SAID LAND SPACE CONTAINS 6,860 SQUARE FEET OR 0.16 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

#### PROPOSED 8' WIDE UTILITY RIGHT-OF-WAY CENTERLINE DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REDAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21, THENCE S02° 07' 48"W, 889.37 FEET ALONG THE WEST LINE OF SAID SECTION 21, THENCE S67° 31' 33"E, 37.36 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" AND THE POINT OF BEGINNING, THENCE CONTINUE S67° 31' 33"E, 130.92 FEET; THENCE N02° 28' 27"W, 19.00 FEET TO THE POINT OF TERMINATION. SAID RIGHT-OF-WAY CONTAINS 149.92 LF, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

Exhibit "B"  
(Survey)

07/16/14

Prepared by and upon recording  
Please return to:

Ginsberg Jacobs LLC  
300 South Wacker Drive  
Suite 2750  
Chicago, Illinois 60606  
Attn: Steven F. Ginsberg, Esq.  
(Site Name: NE01 Haig)

### **MEMORANDUM OF LAND LEASE AGREEMENT**

This Memorandum of Land Lease Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2014, between City of Scottsbluff, Nebraska, a municipal corporation, with its principal offices located at 2525 Circle Drive, Scottsbluff, Nebraska, hereinafter collectively designated LESSOR and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as "LESSEE". LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. LESSOR and LESSEE entered into a Land Lease Agreement (the "Agreement") on \_\_\_\_\_, 2014 for an initial term of five (5) years, commencing on the Commencement Date. The Land Lease Agreement shall automatically be extended for three (3) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.
2. LESSOR hereby leases to LESSEE real estate containing 10,000 square feet of land space ("Land Space") located at Highway 92 & County Road 19, Scottsbluff, Scottsbluff County, Nebraska (the entirety of LESSOR's real property is referred to hereinafter as the Property) and substantially described in Exhibit "A" attached hereto, together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a thirty foot (30') wide right-of-way extending from the nearest public right-of-way, County Road 19, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along the Rights of Way and an eight foot wide right of way ("Further Rights of Way") from the Land Space. The demised premises, right-of-way and further rights of way are hereinafter collectively referred to as the "Premises". The Premises are described in Exhibit A attached hereto and made a part hereof, and as shown on the plat of survey attached hereto and incorporated herein as Exhibit B.
3. The Commencement Date of the Agreement, of which this is a Memorandum, is \_\_\_\_\_.

4. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

[Signature Page To Follow]

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinabove.

**LESSOR:**

**Scottsbluff County, Nebraska , a municipal corporation**

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Name: Randy Meininger  
Its: Mayor  
Date: \_\_\_\_\_

**LESSEE:**

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

By: \_\_\_\_\_  
Name: Lynn Ramsey  
Its: Area Vice President Network  
Date: \_\_\_\_\_

[Acknowledgments Follow On Next Page]



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## LESSOR ACKNOWLEDGEMENT

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On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, \_\_\_\_\_, the undersigned Notary Public, duly commissions and sworn, personally appeared Randy Meininger, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Mayor of the County of Scottsbluff, Nebraska, the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official Notarial Seal, this \_\_\_\_ day of \_\_\_\_\_, 2014.

Notary Public

My Commission Expires:

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF COOK            )

**LESSEE ACKNOWLEDGEMENT**

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, \_\_\_\_\_, the undersigned Notary Public, duly commissions and sworn, personally appeared Lynn Ramsey, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Area Vice President Network of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official Notarial Seal, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## **EXHIBIT A**

### **[WRITTEN METES AND BOUNDS OF THE PREMISES AND INGRESS/EGRESS AND UTILITY EASEMENT]**

#### **PROPOSED 100' X 100' LAND SPACE DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REBAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21; THENCE S02° 07' 48"W, 809.37 FEET ALONG THE WEST LINE OF SAID SECTION 21; THENCE S87° 31' 33"E, 187.78 FEET TO THE POINT OF BEGINNING; THENCE S87° 31' 33"E, 100.00 FEET; THENCE S02° 28' 27"E, 100.00 FEET; THENCE N87° 31' 33"W, 100.00 FEET; THENCE N02° 28' 27"E, 100.00 FEET TO THE POINT OF BEGINNING. SAID LAND SPACE CONTAINS 10,000 SQUARE FEET OR 0.2 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

#### **PROPOSED ACCESS RIGHT-OF-WAY DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REBAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21; THENCE S02° 07' 48"W, 925.37 FEET ALONG THE WEST LINE OF SAID SECTION 21; THENCE S87° 31' 33"E, 37.26 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" AND THE POINT OF BEGINNING; THENCE CONTINUE S87° 31' 33"E, 120.82 FEET TO THE BEGINNING OF A 14.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, ALONG SAID CURVE 21.99 FEET, THE CHORD OF WHICH BEARS N47° 28' 27"E, 19.80 FEET; THENCE N02° 28' 27"E, 102.00 FEET, THENCE S87° 31' 33"E, 15.00 FEET TO THE NORTHWEST CORNER OF THE PROPOSED LAND SPACE; THENCE S02° 28' 27"W, 100.00 FEET ALONG THE WEST LINE OF THE PROPOSED LAND SPACE; THENCE S87° 31' 33"E, 100.00 FEET ALONG THE SOUTH LINE OF THE PROPOSED LAND SPACE; THENCE S02° 28' 27"W, 30.00 FEET; THENCE N87° 31' 33"W, 249.78 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19"; THENCE N02° 19' 18"E, 14.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" TO THE POINT OF BEGINNING. SAID LAND SPACE CONTAINS 6,880 SQUARE FEET OR 0.16 ACRES, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

#### **PROPOSED 8' WIDE UTILITY RIGHT-OF-WAY CENTERLINE DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6TH P.M., SCOTTS BLUFF COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" REBAR MARKING THE NORTHWEST CORNER OF SAID SECTION 21; THENCE S02° 07' 48"W, 809.37 FEET ALONG THE WEST LINE OF SAID SECTION 21; THENCE S87° 31' 33"E, 37.35 FEET, MORE OR LESS, TO THE EAST RIGHT-OF-WAY LINE OF COUNTY ROAD "19" AND THE POINT OF BEGINNING; THENCE CONTINUE S87° 31' 33"E, 130.92 FEET; THENCE N02° 28' 27"W, 19.00 FEET TO THE POINT OF TERMINATION. SAID RIGHT-OF-WAY CONTAINS 149.92 LF, MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS OR AGREEMENTS, RECORDED OR UNRECORDED.

**EXHIBIT B**

**[BOUNDARY SURVEY OF THE PREMISES  
AND INGRESS/EGRESS AND UTILITY EASEMENT]**