

**CITY OF EDINA SMALL WIRELESS  
FACILITY COLLOCATION AGREEMENT**

This Small Wireless Facility Collocation Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between the CITY OF EDINA, MINNESOTA, with its principal offices located at 4801 W 50<sup>th</sup> Street, Edina, Minnesota 55424 ("CITY") and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), ("USER"). CITY and USER are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

**WITNESSETH:**

**WHEREAS**, the Federal Communications Act of 1934, as amended, authorizes CITY to manage and control access to and use of Public Right-Of-Way within CITY limits; and

**WHEREAS**, CITY has elected to manage its Right-Of-Way as authorized by Minnesota Statutes, Sections 237.162-.163 and CITY'S municipal code of ordinances (the "Code"); and

**WHEREAS**, CITY is the owner of, or holds a leasehold or other possessory interest in, certain structures/facilities located within the Public Right-Of-Way ("ROW") that are designed to support or determined by the City to be capable of supporting Small Wireless Facilities; and

**WHEREAS**, USER desires to Collocate Small Wireless Facilities in and/or upon certain CITY Wireless Support Structures/Facilities located within the ROW and/or install, construct, and maintain New Wireless Support Structures in the ROW; and

**WHEREAS**, CITY and USER desire to enter into this Agreement to define the terms, covenants, and conditions which govern their relationship with respect to particular sites at which USER may Collocate the Small Wireless Facilities as hereinafter set forth; and

**WHEREAS**, CITY and USER acknowledge that they may enter into a supplement to this Agreement, in the form attached hereto as Exhibit "A" ("Supplement"), with respect to each particular location or site which CITY agrees to permit Collocation; and

**WHEREAS**, this Agreement is not exclusive and City reserves the right to grant permission to other eligible and qualified entities to Collocate Small Wireless Facilities in City's Right-Of-Way.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

## **I. DEFINITIONS.**

For purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

**“Applicable Standards”:** all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around CITY’S Wireless Support Structures and CITY’S Facilities, as required by this Agreement, including, but not limited to, the most current versions of the National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of CITY or other federal, state, or local authority with jurisdiction over CITY Facilities.

**“CITY’S Facilities”:** all personal property and real property owned or controlled by CITY, including Wireless Support Structures and related facilities used in connection therewith.

**“Collocate” or “Collocation”:** to install, mount, maintain, modify, operate, or replace a Small Wireless Facility on, under, within, or adjacent to an existing Wireless Support Structure that is owned privately or by a local government unit. Notwithstanding the foregoing, for purposes of this Agreement, Collocate or Collocation does not pertain to use of a Small Wireless Facility on any Wireless Support Structure owned by USER or any third party.

**“Communications Facilities”:** wireline or Wireless Facilities, including but not limited to, strands of dark fiber, copper, and/or coaxial cables, wireless antennas, receivers or transceivers, including any and all associated equipment, utilized to provide Communications Service.

**“Communications Service”:** the transmission or receipt of voice, video, data, or other forms of digital or analog signals over USER’S Facilities, to be used by USER to service USER’S customers.

**“Make-Ready Work”:** all work that CITY reasonably determines to be required to accommodate USER’S Facilities and/or to comply with Applicable Standards, which Make-Ready Work shall be performed by the CITY or CITY contractor unless CITY authorizes USER to perform the Make-Ready Work and shall be done at the sole cost and expense of USER. Such work includes but is not limited to, the rearrangement and/or transfer of CITY’S Facilities or existing attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), Wireless Support Structure replacement and construction, clearing, but does not include USER’S routine maintenance.

**"Management Costs"** the actual costs the CITY incurs in managing its Public Rights-Of-Way, and includes such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying Right-Of-Way or Small Wireless Facility Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during Public Right-Of-Way work; determining the adequacy of Right-Of-Way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking Right-Of-Way or Small Wireless Facility Permits.

(b) Management Costs do not include:

(1) payment by a telecommunications right-of-way user for the use of the Public Right-Of-Way;

(2) unreasonable fees of a third-party contractor used by a local government unit as part of managing its Public Rights-Of-Way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for a local government unit; or

(3) the fees and cost of litigation relating to the interpretation of Minnesota Statutes Sections 237.162-.163 or any ordinance enacted under those Sections, or the CITY'S fees and costs related to appeals taken pursuant to Minnesota Statutes Section 237.163, Subdivision 5.

**"Micro Wireless Facility"**: a Small Wireless Facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

**"Plans"**: the Construction Plans and Specifications prepared by USER and approved by CITY for the collocation, construction, installation, maintenance and operations of a Wireless Support Structure, and Premises by USER pursuant to the terms of this Agreement which shall, when applicable, comply with the CITY'S specifications.

**"Permit"**: a permit to collocate, install, or construct a Small Wireless Facility and/or Wireless Support Structure in the Public Right-of-Way.

**"Post-Construction Inspection"**: the inspection by CITY and/or USER or some combination of both to verify that the Small Wireless Facility and/or Wireless Support Structure have been installed and constructed by USER, or its agents, in accordance with this Agreement, Applicable Standards, Plans, and the Permit.

**"Pre-Construction Survey"**: all work or operations required by this Agreement, Applicable Standards and CITY to determine the Make-Ready Work necessary to accommodate USER'S Small Wireless Facilities on a Wireless Support Structure. Such work includes but is not limited to, field inspection and administrative processing.

**"Public Right-Of-Way" or "Right-Of-Way" or "ROW"**: the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local

government unit has an interest, including other dedicated Rights-Of-Way for travel purposes and utility easements of local government units.

A Public Right-Of-Way does not include the airwaves above a Public Right-Of-Way with regard to cellular or other nonwire telecommunications or broadcast service.

**"Small Wireless Facility":**

- (1) a Wireless Facility that meets both of the following qualifications:
  - (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and
  - (ii) all other wireless equipment associated with the Small Wireless Facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or
- (2) a micro wireless facility.

**"Supplement":** the Supplement Agreement to be executed by CITY and USER pursuant to the terms of this Agreement which shall be in the form attached hereto as Exhibit "A".

**"Utility pole":** a pole that is in whole or in part to facilitate telecommunications or electric service.

**"Wireless Facility":**

- (1) equipment at a fixed location that enables the provision of Wireless Services between user equipment and a Wireless Service network, including:
  - (i) equipment associated with Wireless Service;
  - (ii) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and
  - (iii) a Small Wireless Facility.
- (2) "Wireless Facility" does not include:

- (i) Wireless Support Structures;
- (ii) Wireline Backhaul Facilities; or
- (iii) coaxial or fiber-optic cables (i) between Utility Poles or Wireless Support Structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

**"Wireless Service":** means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using Wireless Facilities. Wireless Service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

**"Wireless Support Structure":** a new or existing structure in a Public Right-Of-Way designed to support or capable of supporting Small Wireless Facilities, as reasonably determined by a local government unit.

- i. **"Wireline Backhaul Facility":** a facility used to transport communications data by wire from a Wireless Facility to a communications network.

## **II. USER'S USE OF PREMISES.**

a. Permitted Uses. Subject to the terms, covenants, and conditions of this Agreement, USER'S Small Wireless Facility may be used solely for the following purposes: (i) the transmission and reception of wireless communication signals, including, but not limited to, wireless and internet services and uses incidental thereto ("USER'S Wireless Services"); and (ii) for the purpose of installing, repairing, maintaining, removing and operating USER'S Small Wireless Facility in accordance with this Agreement and in accordance with the transmission and reception of wireless communications signals authorized for use by USER by the Federal Communications Commission ("FCC") ("Permitted Uses"). The use of CITY'S Wireless Support Structures and ROW by USER is nonexclusive, and CITY reserves the right to all CITY'S Wireless Support Structures and ROW to be used by others, provided they do not interfere with USER'S use of USER'S Small Wireless Facility. USER shall Collocate and use each Premises (as hereinafter defined) only in accordance with the terms, covenants, and conditions of this Agreement, good engineering practices and in compliance with all applicable Federal Communications Commission ("FCC"), and other federal, state, and local ordinances, statutes, laws, and regulations. Notwithstanding the foregoing, the scope of this Agreement does not include applications for Small Wireless Facilities made by USER for use of third-party Wireless Support Structures.

b. Before USER shall Collocate any Small Wireless Facility on CITY'S Wireless Support Structures or install a new Wireless Support Structure, as shall be more fully described in each Supplement to be executed by the Parties, and shall hereinafter be referred to as the "Premises". USER shall submit an application for a Small Wireless Facility Permit (the

“Application”) along with a proposed draft Supplement for each proposed Premises, and shall comply with all the terms, covenants, and conditions of this Agreement.

c. The CITY Council shall approve this Agreement. Following said approval of this Agreement, each individual Supplement may be approved by the Director of Public Works or his/her designee.

d. USER shall have the non-exclusive right, at its sole cost and expense, to use each Premises, as identified in each individual Supplement, for the purpose of Collocating Small Wireless Facilities on CITY'S Wireless Support Structure(s) or constructing and installing new Wireless Support Structure(s) and uses incidental thereto, in a manner consistent with this Agreement.

e. Regarding USER'S Application: If, in the judgment of CITY, USER'S proposed use of CITY'S Wireless Support Structure or ROW is inconsistent with the CITY'S use thereof and does not comply with the terms, covenants, or conditions of this Agreement, or any of CITY'S ordinances, rules, or regulations, CITY in its sole discretion shall have the right to deny the Application of USER. CITY shall within ninety (90) days after receipt of a fully completed and executed Application by USER, notify USER in writing whether the Application is approved or denied, unless the ninety (90) day period has been tolled as provided by state law. If CITY does not notify USER within ninety (90) days from the date that the Application was submitted, the Application shall be deemed approved, unless the ninety (90) day period has been tolled as provided by state law.

f. With each Application, USER shall furnish CITY detailed Construction Plans and Specifications for each individual Premises (“Plans”), together with necessary maps, indicating specifically the Wireless Support Structures and ROW of CITY USER proposes to be used for USER'S Small Wireless Facility, the number and character of the Small Wireless Facilities to be placed on such structures, equipment necessary for USER'S use, replacements of existing Wireless Support Structures (“Replacement Wireless Support Structures”), any additional Wireless Support Structures which may be required (“New Wireless Support Structures”), and any new installations for utility transmission conduit, pull boxes, and appurtenances (the “Work”). Upon execution of a Supplement by CITY for each Premises, USER shall have the right to use the Premises for USER'S Small Wireless Facility and may proceed with the Work in accordance with the terms of the Application, Plans, Supplement, and this Agreement. USER and its contractors and employees shall perform all Work at its own expense and in such manner as to not interfere with CITY's use of the Property or the Premises.

g. Any expenses necessary to make the Premises ready for USER'S construction of its improvements (“Make-Ready Work”) shall be the responsibility of USER. USER must obtain and submit to CITY a structural engineering study carried out by a qualified structural engineer showing the Wireless Support Structure and foundation is able to support the proposed Small Wireless Facility. CITY makes no warranties or representations, express or implied, including warranties of merchantability or fitness for a particular use, except those expressly set forth in this Agreement.

h. All Wireless Support Structures used by USER under this Agreement, including any Replacement Wireless Support Structure or New Wireless Support Structure installed by USER, shall remain and/or become the property of CITY, and any cost and/or expense incurred by the USER for changes to existing Wireless Support Structures, conduits, conductor pull boxes, facilities, and appurtenances, or related equipment, or installation of any Replacement Wireless Support Structures, or New Wireless Support Structures, conduits, conductor pull boxes, facilities, or appurtenances, or related equipment under this Agreement shall not entitle USER to ownership of any of said Wireless Support Structures, conduits, conductor pull boxes, facilities, appurtenances, or related equipment.

Upon the completion of the installation of a Replacement Wireless Support Structure or New Wireless Support Structure and the accompanying Post-Construction Inspection, the City shall retain ownership of such structures. No further documentation evidencing City ownership shall be necessary.

i. CITY may deny an application for use of any of CITY'S Wireless Support Structures, conduits, conductor pull boxes, appurtenances, ROW and/or real property by USER if CITY determines that denial is necessary to protect the health, safety and welfare or when necessary to protect the public right-of-way and its current use.

### **III. PREMISES.**

Pursuant to all of the terms, covenants, and conditions of this Agreement, and the applicable Application and Supplement executed by CITY, CITY may approve USER'S application for a particular Premises described in the Supplement, for the collocation, installation, operation and maintenance of Small Wireless Facilities; together with the non-exclusive right of ingress and egress over the applicable ROW, seven (7) days a week, twenty-four (24) hours a day to and from the Premises.

The entirety of CITY'S ROW and property is referred to herein as the "Property".

The primary use and purpose of the Property, inclusive of the Premises, is to provide for traffic control, street lighting and the health, safety, and welfare of the citizens of CITY and the general public ("Primary Use"). CITY'S operations and use of the Property take priority over USER'S operations.

USER agrees that the following priorities of use, in descending order, shall apply in the event of interference with CITY'S property for emergency public safety needs, Premises repair or reconditioning, or other conflict while this Agreement is in effect, and USER'S use shall be subordinate accordingly:

- (1) CITY'S use;
- (2) Public safety agencies, including law enforcement, fire, and ambulance services that are not related to CITY;
- (3) Other governmental agencies where use is not related to public safety;
- (4) Pre-existing licensees or permittees of CITY (if any);

(5) USER'S Permitted Use.

In the event there poses an immediate threat of substantial harm or damage to the health, safety, and welfare of the public and/or the Property/Premises, as reasonably determined by CITY ("Public Threat"), the CITY may take any and all actions the CITY determines are required to address such Public Threat. CITY will make all reasonable attempts to provide as much advanced notice as is reasonably possible under the circumstances by calling USER's Network Monitoring Center ("NMC") emergency number (800) 264-6620; provided, however, that in the event City must take immediate action to eliminate a Public Threat such notice can occur promptly after such actions that affect the Premises are taken, but in no event later than twenty-four (24) hours after such actions, CITY gives written and telephone notice to USER of CITY'S emergency actions.

If CITY determines that the conditions of a Public Threat would be benefited by cessation of USER'S operations of the applicable USER'S equipment, USER shall, within twenty-four (24) hours of receiving telephone notice from CITY to USER's NMC emergency number (800) 264-6620, immediately cease its operations on the Premises upon notice from CITY to do so. Thereafter, USER may only commence operations when the Public Threat is eliminated. In the event such Public Threat cannot be eliminated within thirty (30) days after CITY provides notice of such issue, USER may terminate the applicable Supplement upon notice to CITY.

In the event there are not sufficient electric, telephone, cable, or fiber utility sources located at the Premises or on the Property, USER may request approval from the CITY, by submitting to CITY a written plan for installation, to install such utilities on, over, and/or under the Property and to the Premises as necessary for USER to operate its Approved Use ("Utility Plan"). All electric, telephone, cable, fiber, or other utility necessary for operation of USER'S Small Wireless Facility, hereinafter referred to jointly as "Utilities" shall be installed underground by use of directional boring or within the applicable Wireless Support Structure. CITY shall, in its sole discretion, notify USER that it approves, denies, or modifies the plan within ninety (90) days of receipt of the Utility Plan, and in the case of any denial or modification of the Utility Plan, CITY shall state the reasons therefor.

USER must, at the time of Application, obtain and submit to CITY a structural engineering study carried out by a qualified structural engineer, showing that the Wireless Support Structure(s) is (are) able to support USER'S Small Wireless Facility ("Structural Study"). Said study must be signed by an engineer licensed in Minnesota per Minnesota Rule 1800.4200 and Minnesota Statutes Chapter 326. If the Structural Study finds that any proposed structure is inadequate to support the proposed loads of USER'S equipment, USER shall not install the Small Wireless Facility and the Application shall be denied.



#### **IV. INSTALLATION OF EQUIPMENT.**

##### **a. Construction Plans**

For the initial installation of all USER'S Small Wireless Facility and for any and all subsequent revisions and/or modifications thereof, or additions thereto, at the time of Application for each individual Supplement, USER shall provide CITY with two (2) sets of construction plans ("Construction Plans") consisting of the following:

Drawings showing the location and materials of all planned installations of USER'S equipment and an Engineer's Estimate of all materials and construction methods;

Specifications and pictures of the applicable USER's equipment;

A complete and detailed inventory of all USER's antennas, cables, and other personal property of USER'S Small Wireless Facility to be installed on the Premises. CITY retains the right to survey the installed Small Wireless Facility.

All Plans shall be easily readable and subject to prior written approval by CITY, prior to installation of the applicable USER'S Small Wireless Facility, which approval shall not be withheld, conditioned or delayed without cause. CITY shall have ninety (90) days to review and comment on the Plans, unless the ninety (90) day period is tolled as provided by state law. Should the Plans need to be revised based on the comments provided by CITY and/or the CITY'S structural engineer, no construction of the applicable USER'S Small Wireless Facility shall commence until final approval has been granted by CITY. The Plans shall have affixed to them the signature of USER'S engineer who shall be licensed in the State of Minnesota pursuant to Minnesota Rule 1800.4200 and Minnesota Statutes Chapter 326.

##### **b. Construction Scheduling**

At least ten (10) business days prior to USER'S construction mobilization for installation of USER'S Small Wireless Facility for the applicable Premises, USER shall conduct a meeting with CITY and all the applicable contractors at the Premises or other location as agreed upon and at a minimum the meeting shall be attended by a representative of CITY and USER'S contractors and all of the parties involved in the installation of USER'S Small Wireless Facility.

##### **c. Construction Inspection**

All construction activity shall be subject to inspection and approval by CITY. Inspection may be performed at any time during the course of the construction activity reasonably determined by CITY, at USER'S expense. Construction work performed without approval of CITY will not be accepted and shall be removed or uninstalled at USER'S sole expense. USER shall be solely responsible for all costs associated with said inspection and approval of the installation of USER'S Small Wireless Facility by CITY and/or its engineers.

d. USER'S Exposed Small Wireless Facility

All of USER'S Small Wireless Facility that is to be affixed to a Wireless Support Structure which has exterior exposure shall be as close to the color of the Wireless Support Structure as is commercially available to the USER. For exposed cables, wires or appurtenances, CITY reserves the right to require USER to provide cables, wires or appurtenances in manufactured colors which are commercially available, in lieu of painting.

e. Damage by USER

Any damage to the Property, the Premises, or equipment thereon, or other infrastructure caused by USER in any manner shall be repaired or replaced at USER's sole cost and expense and to CITY'S satisfaction within thirty (30) days of written notice by CITY to USER setting forth the required repairs. If USER does not repair the applicable Premises or Property to a safe condition in accordance with applicable laws, and this Agreement, the City shall have the option to perform or cause to be performed such reasonable and necessary work and to charge USER for the reasonable and necessary cost incurred by the CITY including, but not limited to, the CITY'S standard rates for its employees whom assisted in the repair of the applicable Premises or Property.

f. As-Built Drawings

Within thirty (30) days after USER activates the USER'S Small Wireless Facility, USER shall provide CITY with an "As-Built" drawing in electronic file format compatible with CITY'S record file system consisting of As-Built drawings of the Small Wireless Facility installed at the applicable Premises or Property, which shall show the actual location of all USER'S Small Wireless Facility equipment. Said drawings shall be accompanied by a complete and detailed site survey of the Property and an inventory of all USER'S Small Wireless Facility equipment.

g. Permits for Installation

USER is required to obtain from CITY, or any other applicable governing agency, any and all permits required for a complete installation of USER'S Small Wireless Facility or any utilities necessary for the operation of USER'S Small Wireless Facility, at USER'S sole cost and expense. Said permits shall include, but not be limited to: ROW Permits Obstruction/Excavation, Small Wireless Facility, Meter Hooding, Storm Water, etc. permits ("Permits"). Applicable fees shall be assessed in accordance with Minnesota Statutes 237.163 and FCC regulations. Fees for any Permit shall be borne by USER and USER shall be bound by the requirements of said Permits.

h. New Wireless Support Structures

If CITY permits USER to install a New Wireless Support Structure in the ROW, such Wireless Support Structure shall not exceed fifty (50) feet above ground level, where applicable, subject to local zoning regulations, and shall be separated from other Wireless Support Structures by a minimum of 150 feet. If CITY permits USER to install a New Wireless Support Structure

that replaces an existing Wireless Support Structure that is higher than fifty (50) feet above ground level, the Replacement Wireless Support Structure may be placed at the height of the existing Wireless Support Structure but no higher.

i. Alteration or Modifications

USER may not add, change, modify or alter any of USER'S Small Wireless Facilities from that set forth and/or shown on the applicable Plan or as then currently constructed, without the prior written approval of the CITY, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, USER may repair and maintain the USER'S equipment and may replace USER'S existing equipment with equipment that is substantially similar in appearance, without CITY'S approval, provided the replacement equipment meets all of the conditions of this Agreement including all applicable Ordinances of CITY. USER agrees to reimburse CITY for all reasonable costs incurred by the CITY in connection with any alteration, modification, or addition to USER'S Small Wireless Facility pursuant to this paragraph, including but not limited to plan review, structural review, site meetings, inspection time, and as-built updating because of USER'S changes, and attorney's fees for drafting and/or reviewing documents. All such reasonable costs that may be reimbursed to CITY shall be assessed and governed in accordance with FCC guidelines.

**V. MAINTENANCE AND REPAIR OF WIRELESS SUPPORT STRUCTURES, PROPERTY, AND PERMITTEE'S COMMUNICATION FACILITIES.**

a. Wireless Support Structures and Property

CITY reserves the right to take any and all action CITY deems necessary, in its sole discretion, to repair, maintain, alter, or improve CITY'S Wireless Support Structures, Premises, and Property.

b. Structure Reconditioning and Repair

(1) From time to time, CITY paints, reconditions, or otherwise improves or repairs the Wireless Support Structures, Premises and Property or improvements thereon ("Reconditioning Work"). USER shall cooperate with CITY to allow CITY to carry out Reconditioning Work in a manner that minimizes interference with CITY'S Reconditioning Work.

(2) Except in cases of emergency, prior to commencing Reconditioning Work, CITY shall provide USER with not less than sixty (60) days prior written notice of the Reconditioning Work CITY intends to perform. Upon receiving such notice, it shall be the sole responsibility of USER to take adequate measures to cover or otherwise protect the applicable USER'S Small Wireless Facility from the consequences of such activities, including but not limited to paint, splatter and/or debris fallout. CITY reserves the right to require USER to remove all USER'S Small Wireless Facility during CITY'S Reconditioning Work.

(3) During CITY'S Reconditioning Work, and with written approval of CITY in CITY'S sole discretion, USER may maintain a mobile site on the Premises or on any land owned or controlled by CITY in the immediate area of the Premises determined suitable by CITY. If the Premises will not accommodate mobile equipment, it shall be USER'S responsibility to locate auxiliary sites for USER'S Small Wireless Facility during the Reconditioning Work.

(4) USER may request a modification of CITY'S procedures for carrying out Reconditioning Work in order to reduce the interference with USER'S approved use. If CITY agrees to the modification, USER shall be responsible for all incremental cost and expense related to the modification of CITY'S procedures for Reconditioning Work.

(5) If CITY intends to replace a Wireless Support Structure ("Replacement Work"), CITY shall provide USER with at least sixty (60) days' written notice to remove its equipment. CITY shall also promptly notify USER when the Wireless Support Structure has been replaced and USER may re-install its equipment. During CITY'S Replacement Work, USER may maintain a temporary communications facility on the Property, or after approval by CITY, on any land owned or controlled by CITY in the vicinity of the Property. If the Property will not accommodate USER'S temporary communications facility or if the Parties cannot agree on a temporary location, the USER, at its sole option, shall have the right to terminate the applicable Supplement upon thirty (30) days written notice to CITY.

(6) If CITY intends to repair a Wireless Support Structure due to storm or other damage ("Repair Work"), CITY shall notify USER to remove its equipment as soon as possible. In the event of an emergency, CITY shall contact USER by telephone prior to removing USER'S equipment. Once the Wireless Support Structure has been replaced or repaired, CITY will promptly notify USER it can reinstall its equipment. During CITY'S Repair Work, USER may maintain a temporary communications facility on the Property, or after approval by CITY, on any land owned or controlled by CITY in the vicinity of the Property. If the Property will not accommodate USER'S temporary communications facility, or if the Parties cannot agree on a temporary location, or if the Wireless Support Structure(s) cannot be repaired or replaced within thirty (30) days, USER, at its sole discretion, shall have the right to terminate the applicable Supplement upon thirty (30) days' written notice to CITY. However, at USER'S sole option, within thirty (30) days after the casualty damage, CITY must provide USER with a replacement Supplement to lease space at a new location upon which the Parties mutually agree. The monthly rental payable under the new replacement Supplement will not be greater than the monthly rental payable under the terminated Supplement.

(7) If USER'S installation requires a new Wireless Support Structure to be constructed or an existing Wireless Support Structure to be replaced by USER (the "Replacement Wireless Support Structure") then, any such Replacement Wireless Support Structure, shall be deemed to be a fixture on the Property and the Replacement Wireless Support Structure shall be and remain the property of CITY, without further consideration to or from CITY. Upon completion of USER'S installation, CITY shall be responsible for any and all costs relating to the operation, maintenance, repair and disposal of the Replacement Wireless Support Structure, unless such costs are due to the improper or negligent installation by USER or contractor hired by USER. If the Replacement Wireless Support Structure replaces an existing

structure, then also as part of USER'S installation, USER shall remove, dispose, salvage and or discard the existing structure at USER'S sole discretion.

c. Premises

USER shall, at its own cost and expense, maintain the USER'S Small Wireless Facility in good and safe condition, and in compliance with applicable fire, health, building, and other life safety codes. USER shall obtain from CITY any and all Permits required for the purposes of maintaining the USER's Small Wireless Facility and pay all applicable fees for any Permits required by the CITY.

d. Notice of completion of Maintenance and Repair

CITY shall provide notice to USER when the Reconditioning Work has been completed, after which USER may, at its own cost, remove any measures installed to cover or protect the equipment. Within ten (10) days of said notice, USER shall remove any mobile site placed on the Premises or any other land owned by CITY or any auxiliary site within the CITY.

**VI. CONDITION OF PREMISES.**

Where the Premises and/or Property includes one or more Wireless Support Structures, CITY will keep and maintain the Wireless Support Structures in good repair and condition as CITY deems necessary for their primary use and in the ordinary course of business of CITY. CITY makes no warranty or guarantee as to the condition of any Premises with regard to USER'S intended use of the same.

**VII. TERM, RENT, AND FEES.**

a. Term.

- (i) This Agreement shall remain in effect for five (5) years from the Agreement Effective Date (the "Initial Term"). This Agreement shall be renewed for three (3) additional terms of five (5) years each (each a "Renewal Term"), unless USER provides CITY notification of its intent not to renew this Agreement not less than one hundred eighty (180) days prior to the scheduled termination of the Initial Term or the current Renewal Term, as the case may be. The Initial Term and Renewal Terms are herein referred to as the "Agreement Term." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration and termination.
- (ii) Each Supplement shall be effective as of the date of execution of the applicable Supplement by both Parties (the "Effective Date"). Consistent with Minnesota Statutes Sections 237.162-.163, the term of each Supplement shall be equal to the length of time that the Small Wireless

Facility is in use (the “Term”), unless the Supplement is terminated pursuant to this Agreement.

b. Rent. Rental payments shall commence on the Effective Date of each Supplement and be due at a total annual rental of \$175.00 (the “Annual Rental”), representing \$150.00 per year for rent to occupy space on a Wireless Support Structure and \$25.00 per year for maintenance associated with the space occupied on a Wireless Support Structure, or the maximum annual rental amount allowed by law. The Annual Rental for each Supplement shall be set forth in the Supplement and shall be paid in advance annually on each anniversary of the Effective Date to the payee designated by CITY in the Supplement, or to such other person, firm or place as CITY may, from time to time, designate in writing. Upon agreement of the Parties, USER may pay rent by electronic funds transfer. CITY hereby agrees to provide to USER the reasonable documentation required for USER to pay all rent payments due to CITY.

c. Electrical. CITY shall, at all times during the Term of each Supplement, provide electrical service access within the Premises. As provided by Minnesota Statutes Sections 237.162-.163, CITY may charge a monthly fee for electricity used to operate the Small Wireless Facility, if not purchased directly from a utility, at the rate of:

- i. \$73.00 per radio node less than or equal to 100 max watts;
- ii. \$182.00 per radio node over 100 max watts; or
- iii. The actual costs of electricity, if the actual costs exceed the amount in item (i) or (ii).

The amount of any such monthly fee shall be set forth in each Supplement.

USER shall be permitted at any time during the Term of each Supplement, to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source and a temporary installation of any other services and equipment required to keep USER’S Communications Facility operational, along with all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by CITY. USER shall have the right to install conduits connecting the temporary power source, and the temporary installation of any other services and equipment required to keep USER’S Communications Facility operational, and related appurtenances to the Premises.

Alternatively, Lessee may purchase electricity directly from a utility provider.

d. Engineering costs. The Parties acknowledge and agree that, pursuant to Minnesota Statutes, Sections 237.162-.163, CITY may charge the actual costs of the initial engineering and preparatory construction work associated with USER’S Collocation in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge. USER shall pay such reasonable costs within sixty (60) days of receipt of an invoice that itemizes the costs.

## **VIII. USE; GOVERNMENTAL APPROVALS.**

USER shall use the Premises only for the Approved Use. It is understood and agreed that USER'S permission to use the Premises is contingent upon its obtaining and maintaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or other governmental authorities as well as a satisfactory structural analysis, and a radio frequency analysis as stated in this Agreement. In the event that (i) any application for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to USER is canceled, expires, lapses, or is otherwise withdrawn or terminated; (iii) USER determines that such Governmental Approvals may not be obtained in a timely manner; (iv) USER determines the Premises is no longer technically compatible for its use; or (v) USER, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, USER shall have the right to terminate the applicable Supplement. Notice of USER's exercise of its right to terminate shall be given to CITY in accordance with the notice provisions set forth herein and shall be effective upon the later of: (a) the receipt of such notice as set forth in the NOTICE section of this Agreement; (b) upon such later date as designated by USER; or (c) upon USER's removal of USER'S Small Wireless Facility as required under the terms and conditions of this Agreement. All rentals paid to said termination date shall be retained by CITY. Upon such termination, the applicable Supplement 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 thereunder. Otherwise, the USER shall have no further obligations for the payment of rent to CITY for the terminated Supplement.

## **IX. INDEMNIFICATION.**

To the fullest extent permitted by law, USER agrees to defend, indemnify and hold harmless CITY, and its employees, officials, and agents from and against all claims, actions, damages, losses and expenses, including reasonable attorney fees, arising out of USER'S negligence, misconduct, or USER'S failure to perform its obligations under this Agreement. USER'S indemnification obligation shall apply to USER'S contractors, subcontractors, or anyone directly or indirectly employed or hired by USER, or anyone for whose acts USER may be liable. CITY will provide USER with prompt, written notice of any written claim covered by this indemnification provision; provided that any failure of CITY to provide any such notice, or to provide it promptly, shall not relieve USER from its indemnification obligations in respect of such claim, except to the extent USER can establish actual prejudice and direct damages as a result thereof. CITY will cooperate with USER in connection with USER'S defense of such claim. USER shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of CITY and without an unconditional release of all claims by each claimant or plaintiff in favor of CITY. The indemnity obligation shall survive the completion or termination of this Agreement.

## **X. INSURANCE.**

a. Waiver of Subrogation. The Parties hereby waive and release any and all rights of action for negligence against the other, its officers, directors, employees, and agents which may

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

b. General Liability. USER agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits of \$4,000,000 per occurrence for bodily injury (including death) and property damage and; \$4,000,000 general aggregate including premises, operations, products-completed operations, personal injury and advertising injury, and contractual liability. User shall include the CITY as an additional insured as their interest may appear under this Agreement.

c. Automobile Liability. USER shall maintain Commercial Automobile Liability Insurance, covering all owned, hired, and non-owned automobiles, with a combined single liability limit of \$2,000,000 each accident for bodily injury and property damage.

d. Workers' Compensation. USER shall maintain worker's compensation insurance in compliance with the statutory requirements of the State of Minnesota and Employer's Liability Insurance with limits as follows: \$1,000,000 for bodily injury by disease per employee; \$1,000,000 for bodily injury by disease policy limit; and \$1,000,000 for bodily injury by accident.

e. Additional Insurance conditions.

(i) USER shall deliver to CITY a certificate of insurance as evidence that the above coverages are in full force and effect including CITY as an additional insured as its interest may appear under this Agreement. The insurance policies shall be issued by a company (rated A minus: VII or better by Best Insurance Guide) licensed, authorized, or permitted to do business in the State of Minnesota.

(ii) USER'S policies shall be primary insurance and non-contributory to any other valid and collectible insurance available to CITY with respect to any claim arising under this Agreement. The policies shall also insure the indemnification obligation(s) contained in this Agreement and any Supplement.

(iii) Upon receipt of notice from its insurer(s) USER provide the City with thirty (30) days' advanced written notice to CITY cancellation of any required coverage.



## **XI. LIMITATION OF LIABILITY.**

CITY shall not be liable to the USER, or any of its respective agents, representatives, or 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.

## **XII. ANNUAL TERMINATION.**

Notwithstanding anything to the contrary contained herein, provided USER is not in default hereunder beyond applicable notice and cure periods, USER shall have the right to terminate each Supplement upon the annual anniversary of the Commencement Date provided that USER gives the City three (3) months prior written notice.

## **XIII. INTERFERENCE.**

a. USER shall obtain and provide CITY, at USER'S sole cost and expense, a radio frequency interference study ("RF Report") carried out by an independent professional radio frequency engineer ("USER'S RF Engineer") showing that the use of USER'S proposed "radio frequency," as shown on any Application will not interfere with any existing, licensed communications facilities on the Premises, or CITY'S communications facilities ("CITY'S Communication System"). The USER'S RF Engineer shall provide the applicable RF Report to CITY on or before thirty (30) days of the applicable Application.

b. As part of the Application package, USER shall provide a FCC compliance letter indicating that USER's Small Wireless Facility complies with FCC standards for RF emissions. The letter shall also contain information regarding location of RF caution signage in relation to the Small Wireless Facility equipment.

Upon request by CITY and in conjunction with the first Application made pursuant to this Agreement, USER shall provide CITY with a radiation study of USER'S proposed Communication Facility equipment, to be used in any of the USER'S Communication Facilities, showing that the operation of USER'S proposed Communication Facility equipment shall comply FCC guidelines ("Radiation Report"). CITY may have the Radiation Report reviewed by CITY'S radiation engineer ("Radiation Engineer") to determine if USER is not in compliance with FCC requirements. In the event USER'S proposed Communication Equipment will not comply with FCC requirements, USER shall not use said equipment in any of USER'S Communication Facilities. USER shall be responsible for all cost relating to the Radiation Report and the review of the Radiation Report by CITY'S Radiation Engineer. This study is only required for the first Application made pursuant to this Agreement.

c. USER shall implement all measures at the transmission site required by FCC regulations, including but not limited to posting signs and markings. CITY shall cooperate with and permit USER to implement all reasonable measures in order for USER to fulfill FCC

obligations. CITY agrees that in the event any future party causes an applicable Premises to exceed FCC Radio Frequency radiation limits, as measured on the Premises, CITY shall hold such future party liable for all such later-arising non-compliance.

d. USER agrees to install USER'S Small Wireless Facility in compliance with all terms and conditions of this Agreement and all FCC rules and regulations, and good engineering practices and according to the Plans, Application, applicable Supplement and this Agreement. USER further agrees that the USER'S use of the USER'S Small Wireless Facility will not cause radio frequency interference to CITY'S Communication Systems, provided such systems are lawfully installed and operated.

In the event of interference with CITY'S Communications System, USER shall, within twenty-four (24) hours after USER'S receipt of notice of such interference from CITY, as provided in this Section eliminate the interference or cease using USER'S interfering equipment, except for short tests necessary for the elimination of the interference, until the interference is cured to the reasonable satisfaction of the CITY. If USER, in the event of interference with CITY'S Communication Systems, fails to correct the interference within twenty-four (24) hours or cease using the interfering equipment within said time, except for testing purposes, or demonstrate that USER'S Small Wireless Facility is not the cause of the interference, USER shall cease operation of its Small Wireless Facility or provide CITY with evidence the USER'S Small Wireless Facility is not the cause of the interference. It is further agreed that CITY does not guarantee to USER non-interference to the operation of USER'S Small Wireless Facility by CITY'S Communication Systems or other current users of the Premises or Property (if any). CITY will use its best efforts to notify other users of the Premises or Property of the interference among USER and other users of the Premises or Property.

The Parties agree that such reasonable evidence of interference that is likely caused by USER'S use or operation of USER'S Small Wireless Facility warrants an emergency response and the Notice provision of this Agreement shall not apply. Rather, CITY shall provide USER reasonable evidence that the interference is likely caused by the USER'S use or operation of USER'S equipment verbally by telephone to USER'S NMC at (800) 264-6620.

Upon CITY providing USER notice of reasonable evidence that any interference is likely caused by USER'S use or operation of USER'S equipment USER shall send a qualified technician or representative to the Premises within twenty-four (24) hours from the time that the notice of reasonable evidence is provided by CITY. The required twenty-four (24) hour emergency response time under these circumstances is applicable 24 hours a day, 7 days a week. The qualified technician or representative shall be capable of assessing the situation and eliciting the necessary response, including any repairs, alterations, or modifications to USER'S Small Wireless Facility.

Prior to adding and/or modifying USER'S Small Wireless Facility or any frequencies on a Wireless Support Structure or the Premises, as permitted under this Agreement, USER agrees to notify the CITY of the modified frequencies so that CITY can determine whether or not the modified frequencies will cause radio interference to CITY'S Communication Systems, or other licensees and/or occupants on the applicable Wireless Support Structure or Premises. Upon

request of CITY, USER shall, at USER'S cost and expense, provide CITY with an interference study showing there is not any interference with CITY'S Communication Systems as a result of the modification of the frequencies. The CITY, in its sole discretion, shall retain the right provided herein to submit the interference study results to CITY'S RF Engineer for review. If the USER fails to perform an interference study requested by CITY and submit the results to the CITY, the CITY may have an interference study performed and the USER shall pay the CITY the cost of said interference study.

#### **XIV. REMOVAL AT END OF TERM.**

USER shall, prior to expiration of the applicable Term, or within ninety (90) days after any earlier termination of a Supplement, remove USER'S Small Wireless Facility, conduits, fixtures, and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted at USER's sole expense. CITY agrees and acknowledges that all of USER'S Small Wireless Facilities, equipment, conduits, fixtures, and personal property of USER shall remain the personal property of USER and USER shall have the right to remove the same at any time during the Term. All Wireless Support Structures, conduit, and pole boxes are and shall remain property of CITY. If USER fails to remove USER'S Small Wireless Facility, USER shall pay rent at the then-existing monthly rate until such time as the removal of the equipment, fixtures, and all personal property are completed. If USER fails to remove its facilities within the required time period, CITY reserves the right to remove the facilities and charge USER for the full cost of the removal and storage charges.

Contemporaneously with the delivery to CITY of the first Application required by this Agreement USER shall at its cost and expense deliver to CITY an irrevocable letter of credit ("Letter of Credit") or cash in favor of CITY in the principal amount of Five Thousand and No/100 Dollars (\$5,000.00) to secure USER'S obligation to remove USER'S Small Wireless Facilities according to the terms and conditions of this Agreement. In the event USER fails to remove USER'S Small Wireless Facilities and restore the Property, reasonable wear and tear and casualty damage excepted, CITY may do so and USER shall reimburse CITY for all costs incurred by CITY in removing the USER'S Small Wireless Facility and restoring the Property. CITY may draw upon the Letter of Credit in an amount that will reimburse CITY for its actual costs to remove any of USER'S Small Wireless Facilities and any amount remaining of the Letter of Credit after the removal of USER'S Small Wireless Facilities by CITY will be refunded to USER. If the Letter of Credit is insufficient to cover CITY's costs of removing any of USER'S Small Wireless Facilities, USER shall pay to CITY the deficiency within thirty (30) days of written notice of the amount of the deficiency.

#### **XV. NO REPRESENTATION OR WARRANTY - CONDITIONAL GRANT**

CITY makes no representation or warranty regarding the condition of its title to the Property or its right to grant to USER use or occupation thereof under this Agreement. The approval granted herein is "as is" and "where is." USER is entering into this Agreement and USER'S use of the Property is subject to USER'S own investigation and acceptance. USER'S rights granted pursuant to this Agreement are subject and subordinate to all limitations,

restrictions, and encumbrances relating to CITY'S interest in the Property that may affect or limit CITY'S right to grant those rights to USER.

## **XVI. ASSIGNMENT**

This Agreement and each Supplement under it may be sold, assigned or transferred by USER without any approval or consent of CITY to the USER'S principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of USER'S assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition, or other business reorganization. No change of stock ownership, partnership interest, or control of USER shall constitute an assignment hereunder. Except as stated above, this Agreement and each Supplement may not be sold, assigned, or transferred without the express written consent of CITY. USER shall provide written notice of all sales, assignments, or transfers within 60 days thereof. In the event CITY approves any sale, assignment, or transfer, USER shall not be relieved of any of its obligations under this Agreement or any of the Supplements whose term has not expired or otherwise terminated at the time of such sale, assignment, or transfer. The USER may not sublet any space on a Wireless Support Structure or allow any other party to Collocate on any Wireless Support Structure without the express written consent of CITY.

## **XVII. 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):

|       |   |
|-------|---|
| CITY: | City of Edina<br>Attn: Director of Public Works<br>4801 W 50 <sup>th</sup> Street<br>Edina, MN 55424  |
| USER: | Verizon Wireless (VAW) LLC d/b/a Verizon Wireless<br>180 Washington Valley Road<br>Bedminster, New Jersey 07921<br>Attention: Network Real Estate |

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

## **XVIII. DEFAULT**

In the event there is a breach by a Party with respect to any of the provisions of this Agreement, or under the provisions of an individual Supplement or its obligations hereunder, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure the breach,

provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. A Party's failure to cure a breach within the time period set forth herein shall constitute a "Default".

## **XIX. REMEDIES**

In the event of a Default by either Party, 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 this Agreement and/or the applicable Supplement and/or may pursue any remedy now or hereafter available to the non-defaulting Party under the law of the State of Minnesota provided, however, the USER'S sole remedy is to terminate this Agreement or any Supplement and remove the applicable USER'S Small Wireless Facility pursuant to the terms hereof. Further, upon a Default, CITY may at its option (but without obligation to do so), perform USER'S duty or obligation on USER'S behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by CITY shall be due and payable by USER upon invoice therefor.

## **XX. CASUALTY**

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

## **XXI. APPLICABLE LAWS**

"Laws" means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to the subject of this Agreement or USER'S use that are in force during the term of this Agreement, as lawfully amended including, without limitation, the CITY'S Code. USER and CITY shall comply with all applicable Laws. This Agreement does not limit any rights USER may have in accordance with Laws to install its own poles in the right of way or to attach USER'S equipment to third-party poles located in the Right-Of-Way. This Agreement shall in no way limit or waive either Party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially altered,

preempted, or superseded by changes in Laws, the Parties agree to amend the Agreement and/or Supplement to reflect the change in Laws.

## **XXII. CONDEMNATION.**

If the whole or any part of the Property shall be taken by any public authority under the power of eminent domain, or is sold to any entity having the power of eminent domain under threat of condemnation, then the term of this Agreement or the applicable Supplements shall cease as of the date of the granting of the petition or date of the closing. All rentals paid to said termination date shall be retained by CITY. Any award, compensation, or damages, shall be paid to and be the sole property of CITY, but nothing herein shall preclude USER from claiming against the condemning authority with respect to moving expenses and loss of personal property, and receiving an award therefor.

## **XXIII. DATA PRACTICES.**

The Parties acknowledge and agree that this Agreement is considered public data not on individuals and is accessible to the public under Minnesota Statutes Section 13.03. CITY and USER agree to abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, and all other applicable state and federal rules, regulations, or orders pertaining to privacy or confidentiality.

## **XXIV. MISCELLANEOUS**

a. Approval of Supplement. Each Supplement to this Agreement shall be executed by the City Director of Public Works after the USER has complied with all of the terms, covenants, and conditions of this Agreement and the applicable Application has been approved.

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

c. Complete Agreement; Amendments. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the CITY and the USER. This Agreement may only be amended in writing signed by all Parties. All Exhibits are incorporated into this Agreement by reference.

d. Captions. Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement.

e. Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

f. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.

g. Third Party Rights. This Agreement is not a third party beneficiary contract and shall not in any respect whatsoever create any rights on behalf of any person or entity not expressly a party to this Agreement.

h. Nondiscrimination. In the hiring of employees or contractors to perform work under this Agreement, USER shall not discriminate against any person by reason of any characteristic or classification protected by State or Federal law.

i. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. The venue for all proceedings related to this Agreement shall be in Hennepin County, Minnesota.

j. Binding Effect. The terms and conditions of this Agreement shall run with the Premises and Property, inure to the benefit of and be binding on the respective Parties and their respective successors and permitted assignees.

k. Enforcement and Attorneys' Fees. The prevailing Party in any action or proceeding in court to enforce the terms of this Agreement including any appeals shall be entitled to receive its reasonable attorney's fees and other reasonable costs and expenses from the non-prevailing party.

l. Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

m. Estoppel Information. Each Party shall from time to time, within sixty (60) days after written request from the other Party, execute, acknowledge and deliver an estoppel certificate indicating that this Agreement and any amendments hereto are in full force and effect, setting out the current annual rental amount, date rent is paid through, expiration date of the then current term, and acknowledging that there are not, to such Party's knowledge, any uncured defaults, or specifying such defaults, if any, are claimed.

n. Brokers. If either Party is represented by a real estate broker in this transaction, that Party shall be fully responsible for any fee due such broker in this transaction, and shall hold the other Party harmless from any claims for commission by such broker.

o. No Waiver. No provision of this Agreement will be deemed waived by either Party unless expressly waived in writing by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. No waiver by either Party of any provisions of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

p. Recitals. The Recitals set forth above in this Agreement are hereby incorporated in this Agreement as though they were set forth in the body hereof.

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

**CITY: City of Edina, Minnesota**

By \_\_\_\_\_  
James Hovland  
Title: Mayor

Date: \_\_\_\_\_

AND

By: \_\_\_\_\_  
Scott Neal  
Title: City Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT "A"

### SUPPLEMENT TO SMALL WIRELESS FACILITY COLLOCATION AGREEMENT

1. This Supplement to Small Wireless Facility Collocation Agreement ("**Supplement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the City of Edina, Minnesota, with its principal offices located at 4801 W 50<sup>th</sup> St. Edina, Minnesota 55424 ("CITY"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), ("USER"). CITY and USER are at times collectively referred to hereinafter as the "Parties" or individually as a "Party". ("USER").
2. Small Wireless Facility Collocation Agreement. This Supplement is a Supplement as referenced in that certain Small Wireless Facility Collocation Agreement between CITY and USER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Agreement"). The CITY and USER agree that all of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement and are in full force and effect except as they may be modified by this Supplement. In the event of a conflict, contradiction, modification, or inconsistency between any term of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
3. Premises. The Property owned by CITY is located at \_\_\_\_\_, \_\_\_\_\_, Minnesota \_\_\_\_\_; the Premises approved by the CITY for USER'S use hereunder is described on Exhibit "I" attached hereto and made a part hereof.
4. Term. The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.
5. Consideration. Annual rent for this Supplement shall be One Hundred Seventy-Five and No/100 Dollars (\$175.00) and shall be payable as set forth in the Agreement.

If the CITY is providing electricity pursuant to Paragraph VII of the Agreement, a monthly electrical service fee shall be added to the annual rent due under this Supplement.

6. Site Specific Terms. (Include any site-specific terms)

Any Replacement Wireless Support Structure or New Wireless Support Structure installed by USER pursuant to the Plans at the location shown on Exhibit "I" attached hereto upon completion of the installation of the Wireless Support Structure shall become property of the CITY without consideration to or from CITY. CITY will thereafter be responsible for the Wireless Support Structure as provided in the Agreement. USER shall at USER'S sole cost and

expense, remove, dispose and/or discard any Wireless Support Structure that USER removed and installed a Replacement Wireless Support Structure in place thereof.

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

**CITY: City of Edina, Minnesota**

By: [EXHIBIT ONLY - NOT FOR EXECUTION]

Brian Olson

Title: Public Works Director

Date: \_\_\_\_\_

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

By: [EXHIBIT ONLY - NOT FOR EXECUTION]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “1”**  
**TO SUPPLEMENT SMALL WIRELESS FACILITY**  
**COLLOCATION AGREEMENT**

Premises (Include Map, Wireless Support Structure Diagram, Site Plan and Table Listing All Wireless Support Structure Locations)

