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Legal Department

April 13, 2017

TO: Commissioners, Director Wong

FROM: Steven B. Price, General Counsel

SUBJECT: **Master License Agreement between Ada County Highway District and Verizon Wireless for the Use of Licensor Property in Connection With the Operation of a Wireless Network.**

Staff Report for April 19, 2017 Commission Meeting

Executive Summary

The proposed Master License Agreement (“Agreement”) (Attachment “A”) authorizes Verizon LLC, (“Licensee or Verizon”) a limited and non-exclusive license to construct, operate and maintain wireless communication sites in the public rights-of-way (“ROW”), including Small Cell communications equipment on ACHD’s facilities. Verizon will compensate ACHD for the right to use and occupy portion of ACHD facilities and /or the ROW. The Agreement authorizes Verizon to use the ROW in Ada County, subject to ACHD approval. Verizon has executed the proposed Agreement.

Facts & Findings

Background Summary: On December 7, 2016, the Commission held a Work Session with Verizons’ representatives to consider a proposal for Verizon to occupy the ROW and use ACHD facilities to accommodate the Verizon’s deployment of wireless communications equipment. The Commission directed Staff to negotiate a comprehensive license agreement. Between December 2016 and April 2017, ACHD and Verizon negotiated the terms of a master license agreement. The proposed Agreement contains the following substantive provisions:

License Grant. The proposed Agreement authorizes Verizon to use the ROW and attach, install, operate, maintain, upgrade, remove, reattach, relocate and replace Verizon’s wireless communication equipment on ACHD’s equipment, including traffic poles. The license does not impede ACHD’s exclusive jurisdiction, including ACHD’s ability to improve any rights-of-way in the future. The Agreement does not impede ACHD’s ability to allow third parties to use the ROW or ACHD’s equipment for similar purposes.

Term. The initial term of the Agreement is 10 years, unless 180 days’ notice. Notwithstanding, the Agreement may be terminated with immediately “With Cause” upon written notice to Verizon. If ACHD requires, Verizon will relocate facilities at its expense.

Indemnification. Verizon has agreed to indemnify ACHD for any claims and/or damages arising from the Verizon's use of the ROW and ACHD's facilities.

Liability Insurance. City has agreed to provide general liability insurance coverage with a limit of \$2,000,000 per occurrence and \$4,000,000 general aggregate.

Fiscal Implications

The Agreement will compensate ACHD for the review of each Site License Application and the use of the ROW and ACHD Equipment. The following is a summary of the compensation that Verizon has agreed to pay.

- Application Fee: \$500.00 per site license
- Annual License Fee: \$750.00 per ACHD Equipment Location
- Annual License Fee: \$375.00 per Third Party Location in ROW
- Annual License Fee Annual Adjustment: 2% per year
- All other ACHD Permit Fees and Charges for Construction and Maintenance Activities
- Interest: 12% per annum for late unpaid sums.
- Late Charge: 10% of the amount due.

Policy Implications

Section 404(a) of the Telecommunication Act of 1996 (TCA) added Section 332(c)(7) to the Communications Act of 1934, as amended. Section 332(c)(7) provided from limited preemption of state and local authorities in the siting of wireless service facilities as part of the overall goal of promoting competition and encourage the rapid deployment of new wireless telecommunication technologies. This Agreement facilitates this Federal policy.

Recommendation

Staff is recommending the adoption and execution of the proposed Master License Agreement.

Attachment(s):

1. Master License Agreement w/ Exhibits
 - Exhibit "A" – Form of Site License
 - Exhibit "B" – Licensee's Minimum Insurance Requirements

**MASTER LICENSE AGREEMENT BETWEEN ADA COUNTY HIGHWAY DISTRICT
AND VERIZON WIRELESS FOR THE USE OF LICENSOR PROPERTY IN
CONNECTION WITH THE OPERATION OF A WIRELESS NETWORK**

This Agreement is made and entered into by and between the **ADA COUNTY HIGHWAY DISTRICT**, a body politic and corporate of the State of Idaho (“Licensor”) and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

A. Licensor is a single county-wide highway district organized and existing under the laws of the State of Idaho with exclusive general supervisory authority over all public highways, public streets and public rights-of-way under its jurisdiction, with full power to establish use standards and control access to said public highways, public streets, and public rights of way as further set forth in Idaho Code Section 40-1310 and other provisions of state law.

B. Licensor is the statutory owner of certain transportation facilities located in the public right-of-way situated within the county limits of Ada County, Idaho (“ROW”).

C. Licensee is duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns and transferees, are authorized to conduct business in the State of Idaho.

D. Licensee desires to construct, operate and maintain communications sites from Licensor-owned poles situated in the ROW and, for such purpose, desires to locate, place, attach, install, operate, control, and maintain antennas and other related wireless communications equipment consistent with Small Cell technology on Licensor-owned poles in the ROW.

E. Licensee will agree to comply with Licensor’s ROW use requirements as provided herein.

F. Licensee is willing to reasonably compensate Licensor in exchange for a grant and right to use and physically occupy portions of the poles and/or the ROW as provided herein.

AGREEMENT

1. **Definitions and Exhibits.**

1.1. Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

(A) *Agreement* means this Master License Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network.

(B) *Annual Fee* means that pole attachment fee described in Section 4 of this Agreement.

(C) *Application Fee* means the Site License application fee described in Section 4 of this Agreement.

(D) *Business Day* means a day other than a Saturday, Sunday or other day on which commercial banks in the County are authorized or required to close.

(E) *County* means Ada County, Idaho.

(F) *Code* means Licensor's Policy Manual, Regulations, and Ordinances, as they may be amended, supplemented, or repealed from time to time.

(G) *Commencement Date* means the effective date specified in each Site License.

(H) *Equipment* means:

(i) Small Cell antennas and other wireless communications equipment utilizing small cell technology that is specifically identified and described in Exhibit 1 attached to each Site License (as defined below).

(ii) broadband backhaul transmission facilities, whether provided by landline communications infrastructure (including, without limitation, fiber, conduit and related equipment and improvements) ("Landline Backhaul Equipment") and/or wireless communications infrastructure (including, without limitation, wireless microwave and related cables, wires, equipment and improvements) ("Wireless Backhaul Equipment") that interconnects with wireless communication equipment at the point-of-demarcation and is for the purpose of providing backhaul service; and

(iii) the transmission media attached, mounted, or installed on a pole located in public rights-of-way, in addition to control boxes, cables, conduit, power sources, and other equipment, structures, plant, and appurtenances between the transmission media and the point-of-demarcation for the purpose of providing wireless communication service.

(I) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

(J) *Interference* means physical interference and radio frequency interference.

(K) *Laws* means any and all applicable local, state, and federal statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity or agency having joint or several jurisdiction over Licensee's activities under this Agreement or having jurisdiction that is applicable to any aspect of this Agreement, including the Code (as defined below), that are

in force on date of the execution of this Agreement, and as they may be lawfully enacted, issued or amended during the term of this Agreement.

(L) *Losses* means any and all claims, demands and losses, including reasonable attorneys' fees and costs of defense.

(M) *Permit* means a permit issued and described in accordance with Laws, which is used to regulate, monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the ROW

(N) *Physical interference* means where equipment, vegetation or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sign path.

(O) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent equipment.

(P) *ROW* means the surface of and the space above and below the public roads, streets and alley right-of-way, and public utility easements or other public ways of any type whatsoever, now or hereafter located and existing within the County limits, whether or not improved.

(Q) *Site License* means the form of the license granted by this Agreement, described in Section 2 below, and shown on Exhibit A, and includes all additions and modifications to the extent approved by Licensor as set forth in Section 2 below.

(R) *Small Cell* means compact communication sites in a mobile network but providing a smaller coverage area than traditional macrocells.

(S) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

(T) *Transportation Facilities* means those Licensor-owned poles and fixtures located within the ROW, including without limitation, streetlight poles and traffic poles that are designated or approved by Licensor as being suitable for placement of Equipment.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

(a) Exhibit A: Site License (plus attached exhibits).

(b) Exhibit B: Minimum Limits of Insurance.

In the event of any conflict or ambiguity between this Agreement, including the above-referenced exhibits (the "Exhibits"), and any other agreement between Licensor and Licensee, this Agreement, together with the Exhibits, shall govern and prevail. In the event of any conflict

or ambiguity between this Agreement, including the Exhibits, and any Site License, this Agreement shall govern and prevail.

2. **Site License Granted and Terms.**

2.1. **Scope.** Licensor, acting in its proprietary capacity as the statutory owner of Transportation Facilities in the ROW, does grant (subject to Section 3 below) to Licensee a nonexclusive, revocable license to use Transportation Facilities to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Equipment that may be required or desired to operate a Small Cell (the “Site License”). This grant is subject to the terms, conditions and other provisions set forth in this Agreement; to applicable provisions of the Code; applicable required Permits and all applicable Laws and reasonable regulations of any regulatory agency having competent jurisdiction. This Agreement it is not intended to, and shall not, preclude or impede the ability of Licensor to enter into other similar agreements in the future allowing third parties to also use the ROW, or the ability of Licensor to redesign, reconstruct, relocate, maintain and improve its ROWs and Highways (defined in Section 2.3(c) below) as it determines, in its sole discretion, is appropriate in accordance with applicable law. The Parties contemplate that upon further development by Licensee, any additional Site Licenses requested by Licensee shall be incorporated into this Agreement by means of an addendum signed by both parties, but such additional Site Licenses shall only become effective upon the written approval of Licensor or a designee of Licensor authorized to execute Site Licenses by the Ada County Highway District Board of Commissioners.

2.2. **Use of Licensor Property.** The Site License, if and when approved by Licensor, allows Licensee to access, occupy and use allocated available space on each of the poles identified as Transportation Facilities in Exhibit 1 to the Site License to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Equipment, as identified in such Exhibit 1, solely for the purpose of Licensee operating a Small Cell (“Use”). The Site License also allows the installation, operation and maintenance of ground based, pad mounted equipment cabinets and/or power pedestals needed for the operation of Equipment attached to any of the Transportation Facilities, together with any related conduit, cable or wiring, with the location of any such cabinet or pedestal determined in connection with the issuance of an Permit (if needed). Licensee shall have access to the Transportation Facilities upon which Equipment is installed 24 hours a day, 7 days a week, subject to all limitations and other provisions of this Agreement including, without limitation, Section 2.3 below.

2.3. **Limitations on Use.** Except as otherwise expressly provided herein, the Site License does not authorize Licensee to:

(a) Occupy or use any poles, improvements or structures of any kind, whether within or without the ROW, other than the items identified as Transportation Facilities shown in Exhibit 1 attached to a Site License;

(b) Subject to Section 2.5 below, enter upon public property and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and/or replace any item of Equipment in or on poles or other structures not owned by Licensor and located within the ROW;

(c) Occupy or use the ROW to the exclusion of Licensor for any use within Licensor's jurisdiction, authority and discretion or of others to the extent authorized by law to use the ROW. If the ROW has been opened as a public Highway (as used in the Agreement the term "Highway" is as defined in *Idaho Code* § 40-109(5)) Licensee's authorized use is subject to the rights of the public to use the ROW for Highway purposes;

(d) Interfere with the rights of holders of easements of record or obvious on inspection of the ROW and statutory rights of utilities to use the public ROW, as is more particularly set forth in Section 7.7 of this Agreement; or

(e) Take any action that would jeopardize the structural integrity of Licensor's Transportation Facilities, conflict with Licensor's operations, or interfere with the public's access or use of the ROW.

2.4. Alterations. If Licensee proposes to install Equipment which is different in any material way from the then-existing and approved Equipment, then Licensee shall notify an authorized representative of the Licensor of the proposed changes and obtain Licensor's written approval to make such change. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide "load" (structural) calculations for all Transportation Facilities upon which it intends to modify Equipment in the ROW. Notwithstanding the foregoing, Licensee may modify its Equipment with like-kind or similar Equipment without prior written approval of the Licensor, so long as it (i) does not differ in any material way from the then-existing and approved Equipment, and (ii) does not jeopardize the structural integrity of Licensor's Transportation Facilities or interfere with Licensor's operations; and (iii) does not interfere with the public's access or use of the ROW.

3. **Term of Supplements and Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of no less than ten (10) years commencing on the date that this Agreement is fully executed (the "Execution Date"), and expiring on the later of (a) the tenth (10th) anniversary of the Execution Date, or (b) the expiration of the last Supplement Term (unless sooner cancelled or terminated as provided in this section) (the "Term").

3.2. Supplement Term. Each Site License shall be in effect for a period of five (5) years commencing on the "Commencement Date" determined in accordance with each Site License, and expiring on the day before the fifth (5th) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the "Supplement Term"). Provided that Licensee is not in material breach of the Site License or this Agreement, and that this Agreement has not been terminated, the Supplement Term will automatically be extended for up to three (3) successive five (5) year periods (each, a "Renewal Term"), with the first five (5) year extension of the Supplement Term commencing immediately upon the expiration of the initial period of the Supplement Term, and each additional five-year extension of the Supplement Term commencing immediately upon the expiration of the preceding additional period of the Term unless notice of non-extension is provided to Licensor by Licensee prior to the commencement

of the succeeding Renewal Term. All of the provisions of this Agreement shall be in effect during the Supplement Term and any extension of the Supplement Term.

3.3. Licensor Termination. This Agreement and all Site Licenses may only be cancelled or terminated as provided in this Agreement or any Site License. Licensor may terminate this Agreement or any Site License, With Cause or Without Cause (defined below), before the date of expiration by providing the Licensee with one hundred eighty (180) days express written notice of termination. In addition, Licensor may immediately terminate this Agreement or any Site License immediately With Cause upon written notice to Licensee. Upon termination of this Agreement and all Site Licenses, Licensor may record a Revocation of Agreement for the Use of Licensor Property in the Official Real Property Records of Ada County, Idaho. If this Agreement or any Site License is terminated by Licensor Without Cause under this Section 3.3 prior to its expiration, Licensor agrees to refund the unearned pro rata portion of such any amounts paid to Licensor by Licensee in advance. As used herein, the term “With Cause” shall mean any Default by Licensee (as defined in Section 17), and “Without Cause” shall mean a determination by Licensor that the termination is required for Licensor’s roadway operations or necessitated by future planned roadway projects. Licensor will exercise reasonable efforts to avoid terminating this Agreement and/or any Site License so long as Licensee agrees to relocate the Equipment to an acceptable location approved by Licensor and such arrangement is documented in a new or amended Site License.

3.4. Abandonment. If Licensee abandons the use of a Transportation Facilities location for a period of six (6) or more consecutive months, the Equipment for such Transportation Facilities shall be removed at the expense of Licensee and the Term or Supplemental Term shall be deemed to have expired. In the event Licensee is unable or refuses to remove such Equipment when requested by Licensor, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal. Alternatively, Licensor may elect to take title to abandoned property, provided that Licensee shall submit to Licensor, at Licensee’s expense, an instrument satisfactory to Licensor transferring to Licensor the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

3.5. Licensee Termination. Licensee’s Use is contingent upon Licensee obtaining all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities (collectively, “Governmental Entities”) as well as a satisfactory structural analysis of any building, light pole, sign, or other structure that will permit Licensee’s Use. Licensor shall cooperate with Licensee in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to Licensee’s Use. The Governmental Approvals shall be a condition precedent to Licensee’s signature of a Site License. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; and/or (iv) Licensee determines that the Governmental Approvals do not meet its requirements (including cost), Licensee shall have the right to terminate the applicable Site License upon written notice to Licensor. Notwithstanding anything to the contrary contained herein, Licensee shall have the right to terminate any Site License for

convenience on 180 days' notice to Licensor. In the event of such termination, Licensee shall remove its Facilities and Equipment in accordance with Section 20 below and Licensor shall retain any rent paid to such date.

4. **Fees and Charges.** Licensee shall be solely responsible for the payment of all fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1. **Annual Pole Attachment Fee; Application Fee.**

(a) As of the Commencement Date for each Site License, Licensee shall pay to Licensor an Annual Fee equal to \$750.00 per site location for the use of each Transportation Facility by Licensee pursuant to a Site License, in order for Licensee to occupy and use space on the Transportation Facilities; provided that Licensee shall pay to Licensor an Annual Fee equal to \$375.00 per site location that requires the installation of Equipment on facilities not owned by Licensor but located in the ROW. The Annual Fee paid per Transportation Facility location is non-refundable and is due and payable within forty-five (45) days of the initial Commencement Date for each Site License, and on or before each subsequent annual anniversary of the Commencement Date during the Supplement Term (or until such earlier time as such Site License is terminated). Upon agreement of the Parties, Licensee may pay the Annual Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose upon request of Licensee. Additionally, Licensee will pay Licensor a \$500.00 Site License Application Fee each time Licensee submits a proposed Site License to Licensor for approval. The application will include engineering drawings and a structural analysis stamped by a licensed professional engineer, along with facility site elevations. Licensor will respond to Licensee concerning each Site License Application within fifteen (15) days of receipt from Licensee providing its approval. Upon such approval, and after Licensee obtains all required authorizations, Licensee will prepare, sign and transmit a Site License for the locations in such application to Licensor; and Licensor shall then countersign and return the Site License to Licensee. Licensee will provide Licensor with monthly summaries of all fees paid and each Site License. Licensee acknowledges and agrees that the Annual Fees and each Site License Application Fee specified herein is reasonable and lawful.

(b) Effective on the first anniversary of the Commencement Date of any Site License term, and continuing annually thereafter during the applicable Site License term, the applicable Annual Fee shall be increased by two percent (2%) over the Annual Fee paid for the immediately preceding year.

4.2. **Permit.** No payment is collected under this Agreement for any Permit issued in connection with the installation of Equipment at any Transportation Facility. Permit requirements, fees and charges are solely governed by the requirements imposed by the Code and shall be paid by Licensee accordingly. Fees and charges for any such Permit usually are collected at the time such a Permit is applied for and issued.

4.3. **Taxes.** Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee's Equipment and/or provided services.

4.4. Electric meter. Licensee shall install or cause to be installed, at Licensee's cost, a separate electric meter on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as required by the electric provider for the operation of its Equipment. Licensee's electric meter shall not, under any circumstances, interfere with Licensor's operations. Licensee shall be responsible for paying all charges for any electricity furnished by a utility licensee furnishing service to the Equipment.

4.5. Payments Made. All fees and/or additional payments shall be payable to Licensor at Ada County Highway District, 3775 Adams Street, Garden City, Idaho 83714, Attn: Right of Way Division; or via electronic transfer to Licensor; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

4.6. Interest. In the event of default by Licensee on any payment owed pursuant to this Agreement or any Site License, the unpaid sum shall bear interest from the date the same became due at the rate of twelve percent (12%) per annum, or at the highest rate permitted under the laws of the state of Idaho, whichever is the lesser.

4.7. Late Charges. Licensee acknowledges that late payment by Licensee to Licensor of sums due under this Agreement will cause Licensor to incur costs not contemplated by this Agreement, the exact amount of which will be difficult to ascertain. Accordingly, if payment of any sum due from Licensee shall not be received by Licensor within 10 days after the due date, then Licensee shall pay to Licensor a late fee equal to 10% of such overdue amount. The parties agree that such late charges represent a fair and reasonable estimate of the costs that Licensor will incur by reason of the late payment by Licensee. Acceptance of such late charges by the Licensor shall in no event constitute a waiver of Licensee's default with respect to such overdue amount, nor prevent Licensor from exercising any of the other rights and remedies granted in this Agreement.

5. **Additional License and Permits Required by Code.** To the extent not in contravention of any applicable Law, all of the Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the Code regulating wireless communications facilities. Licensee or its designee may be required to apply for and obtain a Permit issued by the Licensor for work performed within the ROW, and the ROW will be used according to the plans submitted by Licensee and approved by the Licensor in issuing a Permit. Notwithstanding the foregoing, Licensee's operation of the Equipment and work performed in the ROW shall not, under any circumstances, interfere with Licensor's operations of the public use of the ROW. Execution of this Agreement or any Site License does not constitute the issuance of a Permit. In the event of any discrepancy between the terms of this Agreement and a Permit, the Permit shall control.

6. **Basic Design and Installation Requirements for Using Transportation Facilities.** The basic design of the Equipment will be described in Exhibit 1 to each Site License. All of Licensee's construction and installation work for its Equipment on the Transportation Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. Payment of the Annual Fee under each Site License shall be made within forty-five (45) days of the initial Commencement Date of each Site License. When Licensee and Licensor have agreed on an

existing Transportation Facility location as a suitable site for Licensee's Equipment, but the existing Licensor-owned pole needs to be replaced to accommodate the Equipment, then Licensee shall pay all costs related to replacing the Licensor-owned pole, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, traffic signal and/or other items attached to the existing Licensor-owned pole to the Replacement Pole, and removal and salvage of the existing Licensor-owned pole to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Licensor-owned pole and the Replacement Pole. The installation or attachment of the Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

7. **Common Conditions or Requirements Applicable to Site Licenses Issued Under this Agreement.**

7.1. **Equipment Locations.** For each installation, Licensee or its designee shall submit plans and specifications for Licensor review and approval. Locations should be prioritized based upon Licensee's technical and radio frequency needs and construction costs. In addition, in any situation where Licensee has a choice of attaching its Equipment to either Transportation Facilities or third-party-owned property in the ROW, Licensee shall use good faith efforts to attach to the Transportation Facilities, provided that (a) such Transportation Facilities are at least equally suitable functionally for the operation of Licensee's network and (b) the construction and installation costs associated with such attachment over the length of the term are equal to or less than the cost to Licensee of attaching to the alternative third-party-owned property. In the event that no suitable Transportation Facilities or third-party-owned poles are functionally suitable, Licensee may, at its sole cost and expense, install its own poles. Design, location and height of proposed Licensee poles shall be reviewed and subject to administrative approval by Licensor prior to installation. Licensee's Equipment and poles must conform as closely as practicable with the design and color of poles existing in the vicinity of Licensee's Equipment or pole location. Subject to the terms and conditions of this Agreement and the applicable Supplement, Licensee will be responsible for all maintenance, repair and liability for all poles installed by Licensee in the ROW. Upon Licensor approval, the approved plans are inserted in the Exhibit 1 attached to a Site License. If Licensee desires to change or add new locations, Licensee will submit a proposed Site License indicating the additional Transportation Facilities that it wishes to use.

7.2. **Damage to Licensor Property.** If Licensee damages or disturbs the surface or subsurface of any ROW or adjoining property, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner acceptable to Licensor, in Licensor's sole discretion, repair the damage or disturbance immediately.

7.3. **Public Emergency.** In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Transportation Facility on which Licensee has installed Equipment, Licensor may require Licensee to deactivate such Equipment if any of Licensor's employees or agents must move closer to the Equipment than the FCC recommended minimum distance. In such case, Licensor will contact Licensee at 800-264-6620 to request immediate deactivation.

7.4. Transportation Facility Replacement.

(a) Licensee hereby acknowledges that Licensee shall bear all risk of loss in connection with: (i) damaged, downed or deteriorated Transportation Facilities and Equipment where such damage is caused by Licensee, except to the extent such damage is caused solely by the negligence of Licensor; (ii) the performance by Licensee of maintenance and repair required under this Agreement, or the failure or neglect to perform such maintenance and repair; and/or (iii) repair or maintenance necessitated by Licensee's design, installation or use of the Equipment. If a Transportation Facility needs replacement or repair in order to hold Equipment due to the occurrence of any or a combination of clauses (i), (ii) and (iii) above, Licensee shall replace the same at Licensee's cost within a timeframe reasonably determined by Licensor and upon Licensor's approval.

(b) Licensee may, at Licensee's cost, provide a spare pole sufficient to serve as a Replacement Pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee, as applicable, to replace the Transportation Facility as provided in this Section 7.4.

(c) In the event Licensee provides a spare pole, and in lieu of Licensee performing the replacement, Licensee will use the spare pole to replace the damaged existing pole within twenty-four (24) hours of the need for the replacement, and shall deliver the damaged pole and any damaged equipment to the Yard.

(d) Licensee may reinstall its Equipment once the Replacement Pole is installed and functioning as a Transportation Facility and approved in writing by Licensor.

(e) Licensee shall have the right to temporarily use a Transportation Facility for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor is responsible for replacing the Transportation Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole. For the avoidance of doubt, Licensee shall be responsible for replacement of all new Transportation Facilities it installs, and Licensor shall be responsible for any Transportation Facilities it installs. If Licensor is responsible for replacing a Transportation Facility, it shall pay for a basic Transportation Facility, and Licensee shall pay for any extra cost to customize the Transportation Facility to Licensee's specifications.

7.5. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Equipment installations. Licensee shall at Licensor's direction and upon ninety (90) days prior written notice to Licensee, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for a public use. In such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee fails to relocate any Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor (i) may treat

such failure as a Default under Section 17 or (ii) may remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. If Licensor elects to remove or relocate the Equipment in accordance with the foregoing clause (ii), Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor.

(b) In the event Licensee desires to relocate any Equipment from one Transportation Facility to another, Licensee shall so advise Licensor. Licensor may, at Licensor's option and in Licensor's sole discretion, use reasonable efforts to accommodate Licensee, at Licensee's cost, by making another reasonably equivalent Transportation Facility available for use in accordance with and subject to the terms and conditions of this Agreement and to Section 7.1 above.

7.6. Compliance with Law Required. The work done by Licensee in connection with the installation, construction, maintenance, repair, and operation of Equipment on poles within the ROW shall be subject to and governed by all pertinent local and state laws, rules, regulations, including the Licensor's ROW regulations, that are applicable to ensuring the work done does not unduly inconvenience the public in the use of the surface of the streets and sidewalks.

7.7. Identification of Utility Lines. Prior to beginning any excavation or boring project on ROW, Licensee engage a utility locator service. Licensee has the responsibility to protect and support the various utility facilities of other providers while conducting construction, installation, and maintenance operations.

7.8. Submission of Engineering Plans. In conformance with paragraph 4.1(a), and prior to installation, Licensee shall submit engineering plans to the Rights-of-Way Manager for review and approval in accordance with the Rights-of-Way Regulations.

7.9. Non-exclusiveness. The rights and privileges granted to Licensee under this Agreement, and each Site License described herein, are nonexclusive.

7.10. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and radio frequency interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

(a) RF Interference. Licensee shall ensure that the Equipment will not cause radio frequency interference with wireless communication facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or traffic, public access or safety, or other communications signal equipment, except as expressly permitted by the provisions of any Site License.

(b) Existing and Future Uses. Licensee shall not interfere in any manner with the uses of Licensor property including ROW, and including but not limited to sanitary sewers, fiber optics, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner(s) of the affected property or properties. Additionally, to the extent any third party has a statutory right to use the ROW or

Licensee's Transportation Facilities pursuant to any applicable Laws, Licensee agrees to remove its Equipment and the applicable Site Supplement shall be terminated; but prior to removal, Licensee shall be afforded ninety (90) days to relocate the facility to a location agreed upon by Licensor and Licensee.

(c) Licensor Communications. Licensee shall not interfere in any manner with current or future traffic safety equipment or communications of Licensor.

(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Transportation Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. However, Licensor agrees that Licensor and/or any other tenants, licenses, or users of the ROW who currently have or in the future take possession of space within the ROW will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference to the then existing Equipment of Licensee which is measurable in accordance with then existing industry standards, but only to the extent Licensee has (i) provided Licensor with prior written notice of any such equipment that could cause such harms, and (ii) demonstrated to Licensor a high degree of certainty that such equipment could cause such harm, as determined in the sole discretion of Licensor.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of twenty-four (24) hours following notice to Licensee via telephone to Licensee's Network Operations Center at (800) 621-2622, Licensee shall reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 7 and therefore Licensor shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

8. **Damage to Licensee's Equipment.** In the event of any damage to Licensee's Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. **Title and Ownership.**

9.1. Title to the Transportation Facility. Title to the Transportation Facilities shall remain with Licensor. Subject to abandonment as set forth in Section 3.4 hereinabove, title to the Equipment, exclusive of the Transportation Facility (original or replacement) used for support, but including ground mounted equipment, shall remain with Licensee and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2. No Ownership in Licensor Property. Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Transportation Facilities, the underlying real property on which any

Licensor-owned poles or any Equipment is located, or any portion of the ROW. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3. **"As Is" Condition.** Licensee accepts the Transportation Facilities identified in any Site License, or any Replacement Pole, in its "AS IS" condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee, and subject to all applicable laws, rules and ordinances governing the use of the Licensor poles or Licensor for Licensee's intended purpose.

10. **Reserved.**

11. **Waiver and Estoppel Statement by Licensee.** Licensee acknowledges and agrees that the license granted under this Agreement is a permissive use of the ROW pursuant to this Agreement. Licensee further acknowledges and agrees that it specifically assumes the risk that Licensee has expended funds pursuant to and in connection with this Agreement, and this Agreement may not be in effect for a period (if terminated pursuant to the provisions hereof) sufficient for Licensee to realize the economic benefit from such expenditures. Licensee further acknowledges and agrees that it is solely responsible for obtaining the approval of any local land use agencies with jurisdiction over Licensee's use of the ROW.

12. **Maintenance and Repair.** Subject to Section 7, Licensor shall maintain and keep the Transportation Facility containing Equipment in accordance with Licensor's standard maintenance requirements, at its sole cost and expense. Licensee shall keep the Equipment and other improvements by Licensee on the Transportation Facility, if any, in good repair.

13. **Hazardous Substances.** Licensee will be solely responsible for and will indemnify and hold harmless Licensor, its respective directors, officers, employees, agents, successors, and assigns from and against any and all loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Substances on, resulting from the activities of or contamination by Licensee under or about the ROW including without limitation (a) all damages, (b) the costs of any required or necessary repair, cleanup or detoxification of the property and (c) all reasonable costs and expenses incurred by the Licensor in connection therewith, including but not limited to reasonable attorneys' fees. Licensee's obligations pursuant to this paragraph shall survive the termination of this Agreement.

14. **Waiver and Indemnity.**

14.1. **Waiver of Claims.** Licensee waives any and all claims, demands, causes of action and rights it may assert against the Licensor on account of any Loss, damage, or injury to any Equipment as a result of any event or occurrence which is beyond the reasonable control of Licensor.

14.2. **Limitation of Licensor's Liability.** If damages to the Transportation Facilities or ROW results from any fire, or other casualty of the kind covered by standard fire insurance policies

with extended coverage, except as caused solely by Licensor's, its employees', agents' or contractors' negligence or willful misconduct, then Licensee shall be responsible for all damages resulting from such to the extent due to Licensee's use of the Transportation Facilities or ROW, including damage to the ROW. Licensor is not responsible for maintaining any separate policy for fire coverage related to Licensee's use of its Equipment in the ROW. Licensee shall be responsible for all costs related to damage to the Equipment except as caused by Licensor's, its employees', agents' or contractors' negligence or willful misconduct.

14.3. Indemnity. Each Party shall indemnify, defend, 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. In addition, Licensee shall indemnify, defend, and hold Licensor harmless from and against any claim of liability or loss from personal injury or property damage relating to, resulting from, or arising out of Licensee's Equipment in the ROW, except to the extent such claim, damages, or injury is caused by the negligence or willful misconduct of Licensor. The indemnified Party will provide the indemnifying Party with prompt, written notice of any claim covered by this indemnification; provided that any failure of the indemnified Party to provide any such notice, or to provide it promptly, shall not relieve the indemnifying Party from its indemnification obligation in respect of such claim, except to the extent the indemnifying Party can establish actual prejudice and direct damages as a result thereof. The indemnified Party will cooperate appropriately with the indemnifying Party in connection with the indemnifying Party's defense of such claim. The indemnifying Party shall defend any indemnified Party, at the indemnified Party's request, against any claim with counsel reasonably satisfactory to the indemnified Party. The indemnifying Party shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified Party.

14.4. Waiver of Subrogation. The parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Equipment, Transportation Facilities or to the ROW, 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 Equipment, Transportation Facilities or to the ROW shall waive the insurer's right of subrogation against the other party.

15. Insurance Requirements.

15.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B.

15.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of

coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) Business Days after the renewal date containing all the necessary insurance provisions.

16. **Assignment/Subletting.**

16.1. It is expressly agreed and understood by and between the parties hereto, that Licensee will not have the right to assign, sublease, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of Licensor, which consent shall not be unreasonably withheld, conditioned, or denied. Notwithstanding the foregoing, Licensee shall remain as a guarantor of its assignee's obligations under this Agreement, and approval by Licensor of any assignment shall be conditioned upon written confirmation that Licensee will remain as such in a form reasonably acceptable to Licensor.

16.2. Any non-permitted transfer or assignment of the right to attach Equipment to a Licensor-owned pole shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

16.3. Notwithstanding anything to the contrary in this Section 14, without any approval or consent of Licensor, this Agreement and/or any Site License may be sold, assigned or transferred by Licensee to (i) any entity in which Licensee directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in Licensee; or (iii) any entity directly or indirectly under common control with Licensee. Licensee may assign this Agreement and/or any Site License to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Transportation Facility is located by reason of a merger, acquisition or other business reorganization without approval or consent of Licensor.

17. **Default.** It is a "Default" if either party fails to comply with this Agreement or any Site License and does not remedy the failure within thirty (30) days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the defaulting party does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within sixty (60) days after the initial written notice.

18. **Termination/Revocation.** In the event of a Default, without limiting the non-defaulting payment in the exercise of any right or remedy which such party may have by reason of such Default, the non-defaulting party may terminate this Agreement if the Default affects all Site Licenses and the Agreement as a whole, or any Site License subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of Idaho. Further, upon a Default, the non-defaulting party may at its option (but without obligation to do so), perform the defaulting party's duty or obligation. 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.

19. **Records, Audits.**

(a) **Required Records.** Licensee will maintain complete records pursuant to the applicable federal, state and local laws and regulations. Upon reasonable request by Licensor, and within fifteen (15) business days' notice to Licensee at the notice addresses, Licensee will provide Licensor with a report — but no more frequently than once a year — that includes at least the following information: (i) a list of all Site Licenses; (ii) the location of all of Licensor's Equipment; and (iii) a summary of all Annual Fees and Application Fees and any other amounts paid by Licensee or due and owing to Licensor to date. Licensor may require such applicable additional reasonable non-confidential information, records and documents from Licensee from time to time as are appropriate in order to reasonably monitor compliance with the terms of this Agreement. Additionally, Licensor may require Licensee to collect reasonable supplementary information as needed.

(b) **Production of Records.** Licensee shall provide such records within ten (10) Business Days of a request by Licensor for production of the same unless additional time is reasonably needed by Licensee, in which case, Licensee shall have such reasonable time as needed for the production of the same. Such records shall be made available in the County. If any person other than Licensee maintains records on Licensee's behalf, Licensee shall be responsible for making such records available to Licensor for auditing purposes pursuant to this Section 19.

20. **Surrender.** Within sixty (60) days of the expiration of the Term of any Site License, or upon the earlier termination thereof, Licensee shall remove all Equipment attached or ground mounted, at its sole expense, shall repair any damage to the Transportation Facilities or the ROW caused by such removal, and shall restore the Transportation Facilities to the condition in which they existed prior to the installation of the Equipment (whether attached or ground mounted), reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted.

21. **Notices.** Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

<u>Licensee</u>	Verizon Wireless (VAW) LLC d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attention: Network Real Estate
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With a copy to:
Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
3131 South Vaughn Way, Suite 550
Aurora, Colorado 80014
Attention: Network Real Estate

Licensor Ada County Highway District
3775 Adams Street
Garden City, Idaho 83714
Attention: Right of Way Section

Each party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two Business Days after it shall be mailed by United States registered or certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one Business Day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

22. **Miscellaneous.**

22.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all negotiations, understandings or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

22.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22.3. Governing Law. This Agreement shall be governed by the laws of the State of Idaho without regard to choice of law rules. Should the laws of the State of Idaho be amended with respect to the siting, placement, modification or construction of wireless facilities (including, but not limited to, the types of facilities described herein), the Parties shall modify the terms of this Agreement to conform to such laws.

22.4. Jurisdiction and Venue. THE PROVISIONS OF THE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF IDAHO, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN ADA COUNTY, IDAHO. THEREFORE, IN THE EVENT ANY COURT ACTION IS BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS AGREEMENT, THE COURTS OF ADA COUNTY, IDAHO SHALL HAVE

JURISDICTION OVER THE DISPUTE AND PROPER VENUE SHALL BE IN ADA COUNTY.

22.5. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

22.6. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such party, and this Agreement is binding upon such party in accordance with its terms. Licensor hereby designates, and authorizes, its Director, Bruce S. Wong or his successor or designee, to execute all Site Licenses entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

22.7. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

22.8. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

22.9. Limitation of Liability. Except for indemnifications pursuant to Sections 13 and 14, 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 (as further provided in Section 14.4), 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.

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

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

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

22.13. Attorneys' Fees. Should any dispute arising out of this Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

22.14. Contacting Licensee. Licensee shall be available to Licensor, its officers, employees and agents 24 hours a day, seven days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. Licensor, its officers, employees and agents may contact by telephone the network control center operator at telephone number: _____, regarding such problems or complaints.

22.15. Appropriations by Licensor. Article VIII, Section 3 of the Constitution of the State of Idaho provides that “[n]o county, city, board of education, or school district, or other subdivision of the state shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it in such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose. Any indebtedness or liability incurred contrary to this provision shall be void. . . .” Licensee therefore acknowledges that notwithstanding any other provision of this Agreement, no obligation assumed by or imposed upon Licensor by this Agreement shall require the performance of any act by Licensor except to the extent that the cost and expense of such performance may be paid by funds legally available to Licensor to meet the cost and expense of such performance, as determined by Licensor. Licensee further acknowledges that this Agreement shall not be construed as obligating Licensor to make future appropriations for the performance of any obligations hereunder beyond those obligations expressly set forth herein.

22.16. Non-Discrimination. Licensee agrees not to engage in employment practices that discriminate against any employee or applicant for employment based on race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this Section occurs, Licensee, upon written notification by Licensor, shall commence compliance procedures within thirty (30) days.

22.17. No Partnership or Joint Venture. The relationship between Licensor and Licensee is at all times solely that of licensor and licensee, not that of partners or joint venturers.

22.18. Incorporation of Recitals. The recitals set forth hereinabove are hereby incorporated as if set forth in full.

22.19. Copy of Agreement. A copy of this Agreement shall be maintained by Licensor and made available for public records requests in accordance with applicable Law .

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of this ____ day of _____, 2017 (the “Execution Date”).

LICENSOR:

LICENSEE:

ADA COUNTY HIGHWAY DISTRICT

**VERIZON WIRELESS (VAW) LLC, dba
VERIZON WIRELESS**

By: _____
Print Name: _____
Its: _____

By: _____
Print Name: _____
Its: _____

EXHIBIT A

Form of Site License

This Site License (“Site License”), made this ____ day of _____, 2017 (“Effective Date”) between ADA COUNTY HIGHWAY DISTRICT, with an address of Ada County Highway District, 3775 Adams Street, Garden City, Idaho 83714, Attn: Right of Way Division, hereinafter designated “Licensor” and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless, with its principal offices at c/o Verizon Wireless, 180 Washington Valley Road, Bedminster, New Jersey 07921, hereinafter designated “Licensee”:

1. Site License. This is a Site License as referenced in that certain Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network, between Licensor and Licensee dated _____, 2017 (“Agreement”). All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site License, the terms of this Site License shall govern. Capitalized terms used in this Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. Project Description and Locations. Licensee shall have the right to use the Transportation Facility for Equipment at the designated areas in the ROW as further described in Exhibit 1 attached hereto (the “Licensed Area”).
3. Equipment. The Equipment to be installed at the Licensed Area is described in Exhibit 1 attached hereto.
4. Term. The term of this Site License shall be as set forth in Section 3.2 of the Agreement.
5. Fees. The initial Annual Fee for the term of this Site License shall be _____, as determined in accordance with the Agreement, and as adjusted by Section 4 of the Agreement. The Application Fee paid upon submission of the request for this Site License by Licensee is \$500.00, and Licensee confirms the prior payment to Licensor of the Application Fee upon submittal of the draft of this Site License.
6. Commencement Date. The first day of the month following the date Licensee has commenced installation of its Equipment at the Licensed Area.
7. Approvals/Fiber. It is understood and agreed that Licensee’s ability to use the Licensed Area is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee use of the Licensed Area 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 Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a

timely manner; (iv) Licensee determines that it will be unable to obtain in a satisfactory manner, or maintain any fiber or power connection; or (v) Licensee determines that the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate this Site License. Notice of Licensee's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. All rentals paid to said termination date shall be retained by Licensor. Upon such termination, this Site License shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, Licensee shall have no further obligations for the payment of Rent to Licensor.

8. Miscellaneous. _____
_____.

[Signature page follows]

EXECUTED to be effective as of the date shown above.

LICENSOR:

ADA COUNTY HIGHWAY DISTRICT

By: _____
Print Name: _____
Its: _____

LICENSEE:

**VERIZON WIRELESS (VAW) LLC, dba
VERIZON WIRELESS**

By: _____
Print Name: _____
Its: _____

Exhibits:

Exhibit 1

Exhibit 1

Licensed Area

EXHIBIT B

Licensee's Minimum Insurance Requirements

1. **General.**

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form or its equivalent. The insurance coverage required must be issued by an insurer licensed, authorized or permitted to transact business in the State of Idaho, possessing a current A.M. Best, Inc. rating of A-VII or better.

B. Licensee shall, and shall require any of its contractors or subcontractors to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. **Scope and Limits of Insurance.** Licensee shall provide coverage with limits of liability stated below.

A. **Commercial General Liability-Occurrence Form.** Licensee must maintain Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. **Commercial Automobile Liability.** Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. **Workers Compensation and Employers Liability Insurance.** Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the

state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until completion of any construction activities on the property.

(a) The Builders Risk/Installation Floater insurance must include as named insureds, Licensor, Licensee, and all tiers of contractors and others with an insurable interest in the Work

(b) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's insurance coverage must be primary insurance with respect to Licensor, its officers, officials and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The policies must contain a severability of interest clause and the workers compensation will contain a waiver of subrogation against Licensor, its officers, officials and employees.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use commercially reasonable efforts to provide the Licensor with thirty (30) days prior written notice of cancellation. Such notice shall be sent directly to: Ada County Highway District, 3775 Adams Street, Garden City, Idaho 83714, Attn: Right of Way Division.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability include the Licensor, its officers, officials and

employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee.