

Tenant Site I.D. #: MIN Arboretum
Landlord's Site Name: Arboretum Water Tower
Tenant: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

COMMUNICATION SITE LEASE AGREEMENT

by and between

CITY OF CHANHASSEN

and

**VERIZON WIRELESS (VAW) LLC
d/b/a VERIZON WIRELESS**

Dated: _____, 20__

THIS INSTRUMENT WAS DRAFTED BY:

CAMPBELL, KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
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Tenant Site I.D. #: MIN Arboretum
Landlord's Site Name: Arboretum Water Tower
Tenant: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

COMMUNICATION SITE LEASE AGREEMENT

This **Communication Site Lease Agreement** ("Lease") is entered into and is effective as of the ____ day of _____, 20____, by and between the **CITY OF CHANHASSEN**, a Minnesota municipal corporation ("Landlord"), whose address is P.O. Box 147, Chanhassen, Minnesota 55317, and **VERIZON WIRELESS (VAW) LLC**, a Delaware limited liability company, d/b/a **VERIZON WIRELESS** ("Tenant"), with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920.

Recitals

WHEREAS, the Landlord is the owner of certain property located at 2953 Water Tower Place, Chanhassen, Minnesota, 55317, known as "Water Tower Place", as legally described in Exhibit "A" attached hereto and made a part hereof and shown on the "Site Plan" of the Property attached hereto as Exhibit "B" ("Site Plan") (the "Property"); and

WHEREAS, Tenant has requested that the Landlord lease space on the Landlord's water tower located on the Property ("Water Tower") for "Tenant's Antennas," "Coaxial Cables," "Hybrid Coaxial Cables," "RRUs," and "Sector Boxes" as shown on the Plans and Specifications hereinafter defined, all jointly hereinafter referred to as "Tower Equipment", a 21 foot by 31 foot space adjacent to the Water Tower, as shown on and legally described in the Site Plan, hereinafter referred to as the "Leased Premises" for Tenant's "Shelter" and related equipment as shown on the Plans and Specifications, hereinafter referred to as "Ground Equipment" subject to all existing easements, together with appurtenant non-exclusive easements for access, utilities and fiber on,

over and under the Property, in order to install, use, operate, repair, and maintain Tenant's Communication Facility, as hereinafter defined; and

WHEREAS, the Landlord agrees to lease to the Tenant space on the Water Tower for Tenant's Tower Equipment, the Leased Premises, and also grant to the Tenant a right of entry over the Property for ingress and egress to the Water Tower, Leased Premises and non-exclusive easements over the Property for Tenant's Coaxial Cables and Utilities, all as shown in the Plans and Specifications, subject to the terms, covenants and conditions of this Lease.

NOW THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the parties agree as follows:

1. PROPERTY AND PREMISES. Subject to the following terms, covenants and conditions, Landlord leases to Tenant, (i) space on the Water Tower for Tenant's Tower Equipment as shown on the Plans and Specifications prepared by _____ dated _____, 20__ and last revised on the _____ day of _____, 20__, attached hereto as Exhibit "C" ("Plans and Specifications"), (ii) the Leased Premises for Tenant's Ground Equipment, the Tenant's Tower Equipment and the Leased Premises are hereinafter referred to jointly as the "Tenant's Leased Premises", and (iii) appurtenant non-exclusive easements as legally described on Exhibit "A" and shown on the Site Plan for (a) access on, over and under the Property ("Access Easement"), and (b) Tenant's Utilities ("Utility Easements"). The primary purpose of Landlord's ownership of the Property is to operate and maintain a water tower for the residents of Chanhassen and to provide, operate and maintain communication systems for the Landlord's Fire, Police, Emergency Medical, Public Works and Parks Department needs.

2. TERM. The initial term of this Lease shall be five (5) years ("Initial Term"), commencing on _____, 20____ (the "Commencement Date"). Tenant shall have the right to extend this Lease for four (4) additional five (5) year terms ("Renewal Term"). The Renewal Terms of this Lease shall be on the same terms and conditions as set forth herein except for rental adjustments as provided in Paragraph 3, Rent, below. This Lease shall be automatically renewed for each of the Renewal Terms unless Tenant gives Landlord written notice of Tenant's intention not to renew this Lease at least ninety (90) days prior to the expiration of the Initial Term or any applicable Renewal Term.

3. RENT.

a. Tenant shall pay Landlord, as rent, the following sums at the time stated herein ("Rent")": Based on Tenant's initial installation of the Tenant's Tower Equipment and Ground Equipment, the Landlord leasing to Tenant, (i) space on the Water Tower for the Tenant's Tower Equipment and Ground Equipment, and (ii) the Leased Premises, monthly rent of Two Thousand Three Hundred and No/100 Dollars (\$2,300.00). The Rent shall be paid monthly in advance, with the first such monthly payment (prorated for any partial calendar month) due and payable within sixty (60) days of the Commencement Date.

b. The Rent shall be increased each year on the anniversary of the Commencement Date by two percent (2%).

c. If this Lease is terminated according to the terms of this Lease and Tenant has prepaid the Rent, the Tenant shall be entitled to a refund on a prorated, based on a thirty day month, as of the date of termination, if the termination of the Lease is for any reason other than nonpayment of Rent, or Tenant's default, provided that Tenant has removed all of Tenant's Communication Facilities, as required by the terms of this Lease.

d. In addition to Rent, Tenant agrees to timely pay its pro rata share of any real estate taxes based on the Tenant's Leased Premises or personal property taxes in lieu of real estate taxes, required by any governmental body having jurisdiction over the Property, as a result of this Lease, provided Tenant receives written notice of the applicable taxes.

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

e. Tenant shall pay Landlord within sixty (60) days of receipt of an itemized invoice, the following if not already paid by Tenant: (i) all actual engineering fees incurred by Landlord related to Plan Review and Structural Review (if any); and (ii) all building and permit fees (if any); and (iii) all actual attorneys' fees including, but not limited to Lease preparation and negotiation; and (iv) other actual costs and expenses associated with any required interference studies ("Landlord's Administrative Fees").

f. Tenant shall pay a late fee of One Hundred Dollars (\$100.00) if the Rent is not paid within fifteen (15) days of receipt of Landlord's written notice of the missed payment .

4. GOVERNMENTAL APPROVAL CONTINGENCY.

a. Approvals. Tenant's right to use the Water Tower for Tenant's Tower Equipment, the Leased Premises, the Utility Easements and Access Easement as provided in this Lease is expressly made contingent upon (i) Tenant's obtaining at Tenant's sole cost and expense all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority for Tenant's use of the Leased Premises and Tenant's Tower Equipment (individually, a "Governmental Approval" and collectively, the "Governmental Approvals"); (ii) Tenant complying with the terms and conditions of this Lease and the Plans and Specifications; and (iii) the engineering study specified in Subparagraph 4b below to be conducted at Tenant's expense. Landlord shall cooperate with Tenant in its efforts to obtain and retain all such Governmental Approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

b. Interference. Tenant represents and warrants that Tenant's Communication Facility, as hereinafter defined, will not interfere with the Landlord's Police, Fire, Emergency Medical, Public Works and Park's Communications Systems ("Landlord's Communication Systems"). If the Landlord experiences interference within Landlord's Communication Systems and reasonably believes the interference to be from Tenant's Communication Facility, Tenant shall take immediate steps to correct the interference problem at its cost and expense as provided in Paragraph 6(a) hereof.

c. Non-approval. In the event that any Governmental Approval necessary under Subparagraph 4a above is finally rejected or if any permit, license or Governmental Approval issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority so that Tenant, in its sole discretion, is unable to use the Leased Premises

for its intended purposes, Tenant shall have the right to terminate this Lease as provided in Paragraph 10 hereof and be reimbursed for the rent paid if made pursuant to Subparagraph 3a above. Notice of Tenant's exercise of its right to terminate this Lease shall be given to Landlord pursuant to Section 18 hereof. Except as required under Subparagraph 10d below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

d. User Priority. The Landlord and Tenant agree that the following priorities of use, in descending order, shall apply in the event of communication interference, or other uses of the Water Tower or Leased Premises, that conflict with Tenant's uses, or other users of the Water Tower or the Property, while this Lease is in effect:

- i. The Landlord's water storage and distribution needs and the Landlord's non-commercial communication needs including, but not limited to, Landlord's Communication Systems.
- ii. Existing leases on the Water Tower and/or the Property unless there is a material modification of any existing equipment configuration and/or frequency characteristics, in which event all other existing leases shall have priority.
- iii. Tenant's Lease. Unless there is a material modification of Tenant's Communication Facility and/or frequency characteristics in Tenant's Antennas, in which event all other existing leases shall have priority. This use shall be non-exclusive, and the Landlord specifically reserves the right to allow the Water Tower and the Property to be used by other parties and to make additions, deletions, or modifications to its own facilities on the Water Tower and the Property in the

future, provided that they do not interfere with the Tenant's Communication Facility.

- iv. New Leases. To the best of Landlord's ability, Landlord will not knowingly permit other wireless communications carrier Tenants or licensees to, install new equipment on or make any modifications or alterations to equipment on the Property owned or controlled by Landlord, if such modifications or alterations cause interference with Tenant's operations.

5. PERMITTED USES.

a. Subject to the terms of this Lease, the Tenant's Tower Equipment, the Leased Premises, and the Access Easement and Utility Easements, may be used solely for the following uses: (i) the transmission and reception of wireless telephone and radio communication signals including but not limited to wireless and internet services; and (ii) for the purpose of constructing, installing, repairing, maintaining, removing and operating Tenant's Communication Facility in accordance with this Lease and in accordance with the transmission and reception of wireless communication signals authorized for use by Tenant by the Federal Communications Commission ("FCC") (the Tenant's Tower Equipment, Leased Premises, Tenant's Ground Equipment and/or all of Tenant's related equipment including, but not limited to, the improvements described in and/or shown on the Plans and Specifications are hereinafter referred to as "Tenant's Communication Facility"). The use of the Access Easement and Utility Easements are non-exclusive, and Landlord reserves the right to allow the Property to be used by others, provided they do not interfere with Tenant use of Tenant's Communication Facility. Tenant agrees to and shall comply with all applicable ordinances, statutes and regulations of local, state and federal agencies.

b. Tenant, its agents and contractors, are hereby granted the right, at Tenant's sole cost and expense, to enter upon the Property and conduct such studies as Tenant deems necessary to determine the Property's suitability for Tenant's intended use. These studies may include title reports, surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies as Tenant deems necessary or desirable.

c. The placement of the Tenant's Communication Facility and the manner in which the Tenant's Tower Equipment are installed on the Water Tower shall be subject to prior review and approval by a registered professional structural engineer ("Structural Engineer") and the Landlord and its agents, which approval shall not be unreasonably withheld, conditioned or delayed by Landlord. Tenant shall provide Landlord with evidence of review and approval by the Structural Engineer. Landlord shall, at all times, use reasonable efforts to provide Tenant ingress, egress, and access to the Water Tower, and Leased Premises, over the Access Easement, subject to the terms of this Lease provided, however, Landlord shall not be required to remove snow from the Access Easement. Tenant will not allow any mechanics' or materialmen's liens to be placed against the Property as a result of its work on the Property.

The Tenant shall have the right, during construction and installation of the Tenant's Tower Equipment on the Water Tower and Ground Equipment to drive all equipment necessary for construction and installation across the Access Easement. Tenant shall also have the right during this Lease to drive to the Water Tower and the Leased Premises over the Access Easement for the repair, maintenance and operation of the Tenant's Communication Facility. If the Tenant damages the Property during the construction, repair or maintenance of any of the Tenant's Communication Facility at any time during the term of this Lease, it shall immediately (within 30 days), repair the Property to the conditions it was in prior to the Tenant damaging the same including but not limited

to the filling of all ruts caused by equipment driving on the Property and reseeding and/or planting all grass and other vegetation thereon including trees and shrubs, such that the Property is in the same condition as it was prior to the damage caused by Tenant and/or its contractors.

Tenant may not add, change or alter Tenant's Communication Facility from that set forth and/or shown on the Plans and Specifications without the prior written approval of the Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, however, such approval shall not be required for Tenant to change similar type equipment, except for the Tenant's Tower Equipment on the Water Tower, provided that any such change does not materially change the appearance of the Tenant's Communication Facility.

Tenant agrees to enter into an "Escrow Agreement" in a form and substance acceptable to Landlord wherein Tenant shall deposit with Landlord the amount of Five Thousand Dollars (\$5,000.00) to be used to reimburse Landlord for all costs incurred by the Landlord in connection with any alteration or modification of, or addition to, the Tenant's Communication Facility pursuant to this Lease, including but not limited to plan review, structural review, site meetings, inspection time, and as-built updating because of Tenant's changes, including attorney's fees for drafting and and/or reviewing documents.

d. Tenant agrees that if Tenant's Communication Facility produces noise levels that cause a disturbance to the surrounding neighbors of the Property, Tenant will at its own expense install noise mitigating equipment or a buffer to meet State noise standards.

e. Tenant shall telephonically notify the Landlord of scheduled work to Tenant's Communication Facility that is to be done after 5:00 o'clock p.m. on business days, and any time on weekends and holidays. The notice shall be given to Landlord's Assistant City Manager so that it is received at least 48 hours in advance of the start of the scheduled work. In the case of Tenant's

emergency work to the Tenant's Communication Facility, Tenant shall telephonically notify the Landlord as soon as practicable after commencement of the work. In the case of emergency work to the Tenant's Communication Facility after City Hall normal business hours or any time on weekends and holidays, Tenant shall call Landlord's Utility Department at **952-917-9345** to arrange for access on the Water Tower.

f. Landlord agrees to give Tenant at least ninety (90) days' advance written notice of any major repair or maintenance activities related to Landlord's Water Tower operations. In the case of an emergency, notification is not required; however, Tenant will be notified as soon as practically possible. In the event that use of the Water Tower for water service or any necessary maintenance or repair of the Water Tower is interrupted or made impractical because of Tenant's Antennas, or Tenant's Coaxial Cables and other equipment on the Water Tower, the Landlord may interrupt Tenant's use of the Leased Premises and/or Water Tower as is reasonably necessary to prevent interruption of Landlord's water service. The Landlord will use its best efforts to prevent or minimize interruptions to Tenant's use of the Water Tower or the Leased Premises for the painting and/or reconditioning of the Water Tower. Tenant shall provide Landlord's painting contractor with pertinent safety instructions relative to working near the Tenant's Antennas, Tenant's Coaxial Cables and other equipment on the Water Tower, and, if necessary, Tenant may be required to lower the power level or turn off transmission while Landlord's painting contractor is working near Tenant's Antennas, Tenant's Coaxial Cables and other equipment on the Water Tower. If Tenant's Antennas, Tenant's Coaxial Cables and other equipment on the Water Tower are in the way of painting or reconditioning work on the Water Tower, Tenant may be required to temporarily move Tenant's Antennas, Tenant's Coaxial Cables and other equipment on the Water Tower at Tenant's sole cost and expense ("Temporary Relocation"). Tenant shall have the right

to place temporary transmission and reception facilities on the Property until such time as Tenant is able to reinstall Tenant's Facility on the Water Tower. Any additional expense of repainting, repairing or maintaining the Water Tower reasonably incurred by the Landlord as a direct consequence of the presence of Tenant's Antennas, Tenant's Coaxial Cables or other equipment located thereon shall be paid by the Tenant to the Landlord within thirty (30) days following the receipt of the Landlord's written notice of such additional cost which notice shall state the reasons for Landlord incurring the costs and shall include a reasonable itemization of such costs.

6. TENANT'S COMMUNICATION FACILITY.

a. Tenant agrees to install the Tenant's Tower Equipment, in compliance with all FCC rules and regulations, and good engineering practices and according to the Plans and Specifications. Tenant further agrees that the Tenant's use of the Tenant's Communication Facility will not cause radio frequency interference to Landlord's Communication Systems, provided such systems are lawfully installed and properly operated. In the event of interference with Landlord's Communication Systems and Tenant is advised of such interference, Tenant shall eliminate such interference within twenty-four (24) hours or cease using the applicable equipment of Tenant causing the interference except for short tests necessary for the elimination of the interference. If Tenant, in the event of interference with Landlord's Communication Systems, fails to correct the interference within twenty-four (24) hours or ceases using the equipment within said time, except for testing purposes, Landlord shall have the right to order Tenant to disconnect the power to the Tenant's Communication Facility. If Tenant does not immediately disconnect the power to Tenant's Communication Facility, Landlord shall have the right to immediately seek injunctive relief from the applicable court having jurisdiction to disconnect the power to Tenant's Communication Facility. It is further agreed that Landlord does not guarantee to Tenant non-

interference to the operation of Tenant's Communication Facility by Landlord's Communication Systems. Landlord will use its best efforts to notify other users of the Property of the interference, and to coordinate elimination of interference among the Tenant and other users of the Property.

The parties agree that such reasonable evidence of interference that is likely caused by Tenant's use or operation of Tenant's Communication Facility warrants an emergency response and the Notices provision in Section 18 shall not apply. Rather, Landlord shall provide Tenant reasonable evidence that the interference is likely caused by the Tenant's use or operation of Tenant's Communication Facility verbally by telephone at **Tenant's NOC** at 800-224-6620.

Upon Landlord providing Tenant notice of reasonable evidence that any interference is likely caused by Tenant's use or operation of Tenant's Communication Facility, Tenant shall send a qualified technician or representative to the Leased Premises within eight (8) hours from the time that the notice of reasonable evidence is provided by Landlord. The required eight (8) 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 Tenant's Communication Facility.

b. Prior to adding additional antennas, transmitters, receivers or other equipment on the Water Tower or within the Leased Premises, or changing or modifying Tenant's Frequencies, as permitted under this Lease, Tenant agrees to notify the Landlord of the modified frequencies so that the Landlord can perform the necessary interference studies to insure that the modified frequencies will not cause harmful radio interference to Landlord's Communication Systems or other tenants on the Property. Tenant will be required to pay the reasonable costs for said study which will be performed by Landlord's professional communications engineer. In the alternative,

Tenant may perform the interference studies and submit the results to the Landlord. However, the Landlord, in its sole discretion, shall retain the right provided herein to submit the study results to its professional communications engineer for review at Tenant's expense.

c. At Tenant's sole cost and expense, Tenant shall maintain Tenant's Tower Equipment and the Shelter in as close as reasonably possible to the condition the Tenant's Tower Equipment and the Shelter are in as of the date that they are installed on the Water Tower and the Premises, reasonable wear and tear accepted. Tenant shall further maintain the Leased Premises in a neat and orderly fashion including cutting the grass and replacing all trees and shrubs on the Leased Premises that may die during the term of this Lease.

If the Landlord inspects the Tenant's Communication Facility and determines that Tenant has not maintained the Tenant's Tower Equipment attached to the Water Tower, and there is rust or corrosion, broken or improperly installed Tower Equipment of Tenant on the Water Tower (hereinafter referred to as "Defective Condition"), the Landlord shall give the Tenant notice of the Defective Condition, and Tenant shall take such action as is reasonably necessary to correct the Defective Condition. Landlord's notice to Tenant shall inform Tenant: (1) of the action required by Tenant to correct the Defective Condition, and (2) whether the Tenant is required to take immediate action (within 48 hours) of Landlord's notice, or whether Tenant is required to take action within ninety (90) days of Landlord's notice, to correct the Defective Condition, as determined by Landlord in its sole discretion.

7. UTILITY SERVICE AND ACCESS EQUIPMENT. All of Tenant's, electrical wires, telephone cables and related equipment, and gas lines (if any) ("Tenant's Utilities") and Coaxial Cable installed on the Property and/or the Leased Premises shall be installed underground except as shown on the Plans and Specifications and within the Utility Easements, as described in

Exhibit “A” and shown on the Site Plan according to the Landlord’s applicable code, rules and regulations and all state codes, rules and regulations. When installed, the Tenant’s Utilities, including the Coaxial Cable shall be directionally bored and adjusted in the field to avoid potential impact to any existing trees and “hand dug” in any area or location where there are numerous existing utilities. Tenant shall provide Landlord with an as-built plan showing the exact location of all of Tenant’s Utilities and Coaxial Cable installed on the Property, Leased Premises and/or the Water Tower. Tenant shall furnish Landlord with pertinent information as to the exact type of AC power used by the Tenant. The Tenant agrees that upon the request of the Landlord, it will field locate all of Tenant’s Utilities and Coaxial Cable at Tenant’s expense.

It shall be the responsibility of Tenant, its agents, contractors and/or subcontractors at Tenant’s sole cost and expense to contact Gopher One Call and/or all other parties including, but not limited to, Landlord and all of Landlord’s other tenants occupying the Property, for locate requests prior to any construction or installation of the Tenant’s Tower Equipment, Tenant’s Coaxial Cable, Tenant's Utilities and other equipment described in this Lease, on the Property. If any of the Landlord’s other tenants decline to locate their utilities, it shall be the responsibility of Tenant to locate said other tenants’ utilities at Tenant’s sole cost and expense. Landlord agrees that it will assist with contact information for the other tenants upon the written request of the Tenant. Tenant agrees that Tenant will, upon the reasonable request of the Landlord or another tenant of the Landlord, locate all of Tenant’s Coaxial Cables and Tenant’s Utilities.

As partial consideration for Rent paid under this Lease, Landlord hereby grants to the Tenant an appurtenant non-exclusive easement for Tenant’s Utilities, over and under the Utility Easements and an appurtenant non-exclusive easement for ingress, egress, and access to Tenant’s Leased Premises over the Property as legally described in Exhibit “A” and shown on the Site

Plan (“Access Easements”) adequate to service the Tenant’s Communication Facility at all times during the term of this Lease or any Renewal Term. Upon notice, Landlord shall have the right, at Landlord’s sole expense, to relocate the Access Easements, provided such new location shall not materially interfere with the operations of Tenant’s Communication Facility. The Access Easements provided hereunder shall have the same term as this Lease.

8. ADDITIONAL TENANT’S. Tenant acknowledges that Landlord may in the future lease portions of the Water Tower and Property to other parties, so long as Landlord shall not itself, nor permit any new tenants or licensees to install equipment on the Property or within the Leased Premises, if such equipment would cause interference with Tenant’s operations of Tenant’s Communication Facility.

9. DEFAULT. Any of the following occurrences, conditions, or acts shall be deemed a “Default” under this lease:

a. If Tenant fails to pay amounts due under this Lease within thirty (30) days of its receipt of written notice that such payments are overdue;

b. If either party fails to observe or performs its obligations under this Lease and does not cure such failure within sixty (60) days from its receipt of written notice of breach without, however, limiting any other rights available to the parties pursuant to any other provision of this Lease. If the default may not be reasonably cured within such sixty (60) day period, either party may request a thirty (30) day extension of the time to cure said default, which request shall not be unreasonably withheld, conditioned or delayed.

c. Except as expressly limited hereby, Landlord and Tenant shall have such remedies for the default of the other party hereto as may be provided at law or equity following

written notice of such default and failure to cure the same within the applicable time allowed to cure under the terms of this Lease.

10. TERMINATION.

- a. Except as otherwise provided herein, this Lease may be terminated, without penalty or further liability, as follows:
 - i. by either party upon thirty (30) days written notice of a Default as defined herein (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof);
 - ii. by Tenant upon ninety (90) days written notice by Tenant if Tenant is unable after filing all necessary applications for obtaining or maintaining of any license, permit or other Governmental Approval and making all reasonable efforts and using due diligence to comply with all requirements necessary to obtain or maintain any license, permit or other Governmental Approval necessary for the installation and/or operation of the Tenant's Communication Facility or Tenant's business;
 - iii. by Tenant upon ninety (90) days' notice if the Tenant's Communication Facility becomes obsolete or unacceptable under Tenant's design or engineering standards for Tenant's Communication Facility;
 - iv. by Landlord if Tenant fails to cure within ninety (90) days of written notice by Landlord to Tenant that Landlord has determined that Tenant has failed to comply with any applicable ordinance, or state or federal law, or any conditions attached to Government Approvals granted thereunder, after a public hearing before the Landlord's Council;

- v. by Tenant if there is an interference problem with the Landlord's Communication Systems caused by Tenant's Communication Facility that cannot be corrected; or
- vi. by Landlord upon one hundred eighty (180) days written notice after the end of the First Renewal Term, if Landlord's Council decides to sell or redevelop the Property and/or discontinue use of the Property for public or governmental purposes in a manner that is inconsistent, in Landlord's sole opinion, with Tenant's continued use of Tenant's Communication Facility.

b. Notice of Termination. The parties shall give notice of termination of this Lease in accordance with Section 18 of this Lease. All rentals paid for by Tenant prior to said termination date shall be retained by Landlord.

c. Tenant's Liability for Early Termination. If Tenant terminates this Lease pursuant to subsection 10.a.iii above, Tenant shall pay to Landlord as liquidated damages for early termination, six months of additional Rent for the year in which Tenant terminates; provided, however, that Tenant shall not be required to pay an liquidated damages or termination fee if Tenant elects not to renew the term of this Lease pursuant to Section 2, above.

d. Removal of Communication Facility. The Tenant shall remove all of Tenant's Tower Equipment, Coaxial Cable, Tenant's Utilities, the Shelter and all of Tenant's Ground Equipment in the Leased Premises on or before the end of the Initial Term or the end of any Renewal Term if Tenant is not going to renew this Lease. Upon termination of this Lease for any other reason, Tenant shall, within ninety (90) days of "Landlord's Notice" as hereinafter provided, remove all of Tenant's Tower Equipment, Coaxial Cable, Utilities, all of Tenant's equipment in the Leased Premises and any fencing around the Leased Premises and all Coaxial Cable, and Utilities and restore the Water Tower and the Property to a condition as close as

possible to its original condition. Any of Tenant's Communication Facility or any other improvement made by Tenant on the Property, remaining on the Property ninety (90) days after Landlord's Notice may be removed by Landlord at Tenant's sole cost and expense, or at Landlord's sole discretion, become the property of the Landlord free of any claim by Tenant or any person claiming through Tenant. If Tenant fails to remove all of the Tenant's Communication Facility or any other improvements within the above-described time periods, the Tenant shall pay to Landlord, notwithstanding the termination of this Lease, Rent in an amount equal to 150% of the amount of Rent that would have been due for the period of time that any of the Tenant's Communication Facility remains on the Property.

11. INSURANCE.

Tenant agrees to obtain and maintain during the term of this Lease the insurance coverage's set forth in Exhibit "D".

12. DEFENSE AND INDEMNIFICATION.

a. General. Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which the Landlord may be liable in the performance of this Lease, except to the extent that any cost, losses, expenses, demands, actions or causes of action arise from the negligence, or willful misconduct of Landlord, or its respective employees, agents or contractors. Tenant shall further defend and indemnify all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of the Tenant's Communication

Facility on the Property, except to the extent that a claim arises from the negligence or willful misconduct of Landlord or its respective employees, agents or contractors.

Notwithstanding any other term, covenant or condition of this Lease, the Landlord's liability under this Lease for any claim of any nature or any cause of action against Landlord, by any person or party, is limited to the liability limits set forth in Minnesota Statutes, Chapter 466.

b. Tenant's Warranty. Tenant represents and warrants that its use of the Tenant's Tower Equipment and the Leased Premises, will not generate, and Tenant will not store or dispose of on the Leased Premises, nor transport to the Leased Premises, or over the Property, any Hazardous Materials, as hereinafter defined, except for equipment and supplies commonly used by Tenant in the operation of Tenant's Communication Facility which may include generator fuel, electronics, cables, basic cleaning materials and back up batteries, unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Leased Premises or Property. Landlord acknowledges that Tenant may be utilizing and maintaining sealed batteries, a HVAC system and/or a halon / FM 200 fire suppression system on the Leased Premises and that the use and maintenance of such items shall not constitute a breach of the terms of this Lease. The obligations of the Tenant under this Paragraph 12 shall survive the expiration or other termination of this Lease. Tenant shall not install a generator on the Leased Premises or on the Property unless specifically shown in the Plans and Specifications approved by the Landlord.

c. Hazardous Materials. Without limiting the scope of Subparagraph 12a and 12b above, Tenant will be responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including

reasonable attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises or the Property associated with the Tenant's use of Hazardous Materials, except to the extent that any claims, cost and/or liability including reasonable attorneys' fees arising out of or in connection with the cleanup or restoration of the Leased Premises or the Property arising from the negligence or willful misconduct of the Landlord or its employees, agents or contractors. For the purposes of this Lease, "Hazardous Materials" shall be interpreted broadly and specifically includes, without limitation, asbestos, fuel, batteries or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA. Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries within its Communications Facility so long as it does so in full compliance with all applicable laws. Tenant shall not be responsible for any Hazardous Materials that existed on the Property on or before the effective date of this Lease or that were not brought on the Property by Tenant.

13. LIMITATION OF LIABILITY. Notwithstanding anything to the contrary in this Lease, in no event will either party be liable to the other party for, or indemnify the other party against, punitive, indirect, incidental, special or consequential damages, including, without limitation, loss of profits, income or business opportunities; provided, however, that this provision shall not release or reduce Tenant's obligation to pay Rent to the Landlord in accordance with the terms of this Lease.

14. ASSIGNMENT. This Lease, or rights thereunder, may not be sold, assigned, or transferred at any time by Tenant except to Tenant's affiliates or subsidiaries, or any party that merges or consolidates with Tenant or Tenant's parent, or any party that purchases or otherwise acquires all or substantially all of Tenant's stock or assets in the market defined by the FCC in

which the Property is located without the written consent of the Landlord, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this paragraph, an "affiliate" or "subsidiary" means an entity in which Tenant owns greater than a 50% interest. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity which provides financing for the purchase of the Tenant's Tower Equipment, Equipment Cabinets, subject to Landlord's rights to retain the same and/or other improvements if Tenant fails to remove them as required by this Lease.

15. QUIET ENJOYMENT. Tenant, upon paying Rent, shall peaceably and quietly have, hold and enjoy the use of the Water Tower for Tenant's Tower Equipment, the Leased Premises, the Access Easements and Utility Easements provided Tenant is not in default under any other covenant or agreement contained in this Lease. Landlord hereby waives any and all lien rights it may have statutory or otherwise concerning the Tenant's Communication Facility or any portion thereof which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under the applicable laws, and Landlord gives Tenant and Tenant's mortgagees ("Mortgagees"), the right to remove all or any portion of Tenant's Communication Facility from time to time, whether before or after default under the Lease, in Tenant's and/or mortgagee's sole discretion and without Landlord's consent, subject to the obligations of the Tenant to remove Tenant's Communication Facility as set forth in Section 10(d). If a Mortgagee desires to remove Tenant's Communication Facility, the Mortgagee shall sign an agreement with the Landlord stating that they will be responsible for restoring the Water Tower and the Property to a condition as close as possible to its original condition, as required in this Lease, and that they will be liable to the Landlord for any cost and expenses incurred by

Landlord in restoring the Property to a condition as close as possible to its original condition in the event that the Mortgagee fails to do so.

16. DAMAGE OR DESTRUCTION. If the Tenant's Communication Facility or any portion thereof is destroyed or damaged so as to materially hinder the effective use of the Tenant's Communication Facility by Tenant through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord. In such event, all rights and obligations of the parties shall cease (except as to the Tenant's obligations under this Lease to remove the Tenant's Communication Facility under Paragraph 10.d.) as of the date of the notice to Landlord and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then the Rent shall abate for a period of ninety (90) days or until the Tenant's Communication Facility is restored to the condition existing prior to the damage or destruction, whichever is earlier.

17. CONDEMNATION. In the event the whole of the Leased Premises or the Property is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises or the Property vests in the condemning authority. In event a portion of the Leased Premises is taken by eminent domain, Tenant shall have the right to terminate this Lease as of the date of title transfer, by giving thirty (30) days' written notice to Landlord. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises or the Property shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be

separately awarded or recoverable by Tenant including any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing all or a portion of the Tenant's Communication Facility.

18. NOTICES. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service, to the following addresses or to any other address of Tenant or Landlord that is given from time to time to the other party pursuant to this provision, regarding written notice:

If to Landlord:	City of Chanhassen P.O. Box 147 Chanhassen MN 55317 Attn: City Manager
with copy to:	Chanhassen City Attorney Campbell Knutson, P.A. 860 Blue Gentian Road, Suite 290 Eagan, MN 55121
If to Tenant:	Verizon Wireless (VAW) LLC d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, NJ 07921 Attn: Network Real Estate Phone: 866-862-4404

19. RESTORATION OF PROPERTY. Tenant shall deposit with the Landlord at the time of the building permit application a performance bond in the amount of \$25,000 as security for the restoration of the Property to the condition it was prior to the installation of Tenant's Communication Facility ("Restoration Security") reasonable wear and tear excepted.

20. MISCELLANEOUS:

a. Authority. Landlord represents and warrants that Landlord has full authority to enter into and sign this Lease.

b. Complete Lease; Amendments. This Lease supersedes all prior discussions and negotiations and contains all agreements and understandings between the Landlord and Tenant. This Lease may only be amended in writing signed by all parties. All Exhibits are incorporated into this Lease by reference.

c. Counterparts. This Lease may be signed in counterparts by the parties hereto each of which counterparts shall be considered an original.

d. Binding Effect. The terms and conditions of this Lease shall run with the Property, inure to the benefit of and be binding on the respective parties and their respective successors and permitted assignees.

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

f. Governing Law. This Lease shall be construed in accordance with the laws of the State of Minnesota.

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

h. Memorandum of Lease. Landlord agrees, upon the request of the Tenant, to sign a Memorandum of Lease in the form acceptable to both parties which may be recorded in the Office of the Carver County Recorder.

i. Estoppel Information. Each party shall from time to time, within thirty (30) days after written request from the other party, execute, acknowledge and deliver an estoppel

certificate indicating that this Lease and any amendments thereto are in full force and effect, setting out the current monthly 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.

j. 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, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

k. No Waiver. No provision of this Lease 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 Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

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

[Remainder of Page Intentionally Left Blank.]
[Signature page follows.]

IN WITNESS WHEREOF the parties hereto have executed this Lease Agreement the day and year first above written.

**LANDLORD:
CITY OF CHANHASSEN**

BY: _____

Name: Denny Laufenburger

Title: Mayor

BY: _____

Name: Todd Gerhardt

Title: City Manager

Date: _____

**TENANT:
VERIZON WIRELESS (VAW) LLC
d/b/a VERIZON WIRELESS**

BY: _____

Name: _____

Title: _____

Date: _____

THIS INSTRUMENT WAS DRAFTED BY:
CAMPBELL KNUTSON, P.A. [JFK]
860 Blue Gentian Road, Suite 290
Eagan, MN 55121
Telephone: (651) 452-5000

LIST OF EXHIBITS

- Exhibit “A”: Legal Descriptions of:
- (1) Property
 - (2) Leased Premises
 - (3) Access Easements
 - (4) Utility Easement
- Exhibit “B”: Site Plan showing:
- (1) Property
 - (2) Leased Premises
 - (3) Access Easements
 - (4) Utility Easement
- Exhibit “C”: Plans and Specifications
- Exhibit “D”: Tenant’s Required Insurance

Tenant Site I.D. #: MIN Arboretum
Landlord's Site Name: Arboretum Water Tower
Tenant: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

EXHIBIT "A"

LEGAL DESCRIPTIONS

(1) LEGAL DESCRIPTION OF PROPERTY:

The following described property located in Carver County, Minnesota:

Address: 2953 Water Tower Place
Chanhassen, MN 55317

(2) LEGAL DESCRIPTION OF LEASED PREMISES:

(3) LEGAL DESCRIPTION OF ACCESS EASEMENTS:

(4) LEGAL DESCRIPTION OF UTILITY EASEMENTS:

EXHIBIT “B”

SITE PLAN

EXHIBIT “C”

PLANS AND SPECIFICATIONS

EXHIBIT "D"

TENANT'S REQUIRED INSURANCE

a. Worker's Compensation. The Tenant must maintain Workers' Compensation insurance in compliance with all applicable statutes, rules and regulations. The policy shall also provide Employer's Liability coverage with limits of \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee.

b. General Liability. The Tenant must maintain commercial general liability coverage with a limit of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, Premises/Operation, broad form contractual liability, independent contractors, and products/completed operations.

Tenant will maintain Completed Operations coverage for one (1) year after the construction of Tenant's Communication Facility is completed.

c. Automobile Liability. The Tenant must carry commercial Automobile Liability coverage with a combined single limit of \$5,000,000 each accident for bodily injury and property damage covering all owned, non-owned and hired automobiles.

d. Tenant Property Insurance. The Tenant must keep in force for the duration of the Lease a policy covering damages to its property at the Leased Premises. The amount of coverage shall be for the full replacement cost value and be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.

e. Excess/Umbrella Liability. Tenant shall also maintain an umbrella or excess liability insurance policy with a limit of \$1,000,000 per occurrence and aggregate which provides coverage in excess of the commercial general liability, commercial automobile liability and employer's liability insurance maintained by Tenant under this Lease.

f. Additional Insured - Certificate of Insurance. The Tenant shall provide, prior to the start of construction of the Communication Facility, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A- or better), licensed, authorized or permitted to do business in the State of Minnesota, which includes all coverages required in this Paragraph. Tenant will include the Landlord and the City as an Additional Insured as their interest may appear under this Agreement on the General Liability and Commercial Automobile Liability Policies. Upon receipt of notice from its insurer(s), Tenant shall use commercially reasonable efforts to provide Landlord with thirty (30) days prior written notice of cancellation of any coverage required herein.