

ORDINANCE No. 180379

Grant a limited right-of-way use agreement to Verizon Wireless (VAW) LLC, doing business as Verizon Wireless (“Verizon Wireless”) for five years for mobile telecommunications services, and establish terms and conditions (Ordinance).

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT

A. Grant of Authority. The City does hereby grant Verizon Wireless (VAW) LLC d/b/a Verizon Wireless (“Verizon Wireless”), a Delaware limited liability company qualified to do business in the State of Oregon, and Verizon Wireless’s successors and assigns, as approved by the City of Portland under Section 12 of this Agreement, the privilege and authority to access Structures located in specific City Streets to construct, repair, replace, maintain and operate Facilities for a Telecommunications System in, under and over the surface of those City Streets. Access to Structures is subject to receipt of authorization from the owner of the Structures. Verizon Wireless intends to use its Telecommunications System to provide Mobile Telecommunications Services. Verizon Wireless represents that it has applied for and received all necessary regulatory authority to provide Mobile Telecommunication Services.

1. This Agreement does not authorize Verizon Wireless to operate a cable system as defined by 47 USC §522(7) (04/01/2006) or provide video programming, as defined by 47 U.S.C.A §522 (20) (04/01/2006) or to provide a telecommunications service as defined in ORS 759.005(2)(g)(2005).
2. Nothing in this Agreement shall preclude Verizon Wireless from entering into a contract for the use of any portion of its Telecommunications System with any Person or other entity for any services, whether specified herein or not, provided that said Person or entity is another franchisee, licensee, or said Person has assumed responsibility for obtaining any required authority from the City.
3. The authority granted by this agreement is limited to: A) West Burnside Street, beginning at the intersection with SW 14th Avenue and proceeding westerly to the Portland city limit; B) all of SW Barnes Road; C) SW Skyline Boulevard from West Burnside Street to SW Fairview Boulevard; and D) SW Boones Ferry Road from its intersection with SW Terwilliger Boulevard near SW 2nd Avenue and proceeding southerly to the Portland city limit.

B. Duration. The term of this Agreement, and all rights and obligations pertaining thereto, shall be five (5) years, as measured from its effective date, unless terminated sooner as provided herein or renewed in accordance with Section 15.

- C. Effective Date. The effective date of this Agreement shall be 60 days after passage of the Agreement by the City Council, unless Verizon Wireless fails to file an unconditional written acceptance of this Agreement in accordance with Section 17 of this Agreement, in which event this Agreement shall thereupon be null and void. The passage date of this Agreement is set forth on the last page of the original hereof, as stamped by the Council Clerk.
- D. Agreement Not Exclusive. This Agreement is not exclusive. The City expressly reserves the right to grant rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Verizon Wireless hereunder, by lease, franchise, permit or otherwise.
- E. Charter and General Ordinances To Apply. To the extent authorized by law, this Agreement is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Verizon Wireless, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Agreement, to the extent authorized by law. Nothing in this Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.
- F. Mutual Reservation of Rights. Verizon Wireless and City disagree on the legality of the provisions in this Agreement that refer to or incorporate Charter requirements. Nothing in this Agreement shall be deemed a waiver by Verizon Wireless or the City of the rights of Verizon Wireless or City under applicable law. By entering into this Agreement, Verizon Wireless is not waiving its rights to seek judicial or administrative review of the provisions in this Agreement and is not agreeing that the provisions in this Agreement are authorized by federal, state or local law. The City reserves and in no way waives any right to enforce the requirements in this Agreement during the term of this Agreement and Verizon Wireless agrees to such reservation and non-waiver by the City. Verizon Wireless also reserves and in no way waives any right to challenge the enforcement of the requirements in this Agreement and the City agrees to such reservation and non-waiver by the Company.

## Section 2. DEFINITIONS

- A. Captions. Throughout this Agreement, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Agreement. The captions shall not affect the meaning and interpretation of this Agreement.

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- B. Definitions. For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.
1. "Agreement" means this Agreement, as approved by the City Council and accepted by Verizon Wireless, according to the terms of Section 17 of this Agreement.
  3. "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
  4. "City Council" means the Council of the City of Portland.
  5. "Verizon Wireless" means Verizon Wireless (VAW) LLC d/b/a Verizon Wireless.
  6. "Facility" means capital, equipment and property, including but not limited to the optical fiber, wires, pipes, mains, conduits, ducts, pedestals, antennas, cabinets and electronic equipment located in the Streets used for transmitting, receiving, distributing, providing or offering Mobile Telecommunication Services over the spectrum of radio frequencies licensed by the Federal Communications Commission.
  7. "Attached Facilities" are any Facilities affixed to a Structure except optical fiber, wires, coaxial cable and the mounting hardware used to attach optical fiber, wires, coaxial cable. Examples of "Attached Facilities" include but are not limited to antennas, telephone boxes, power boxes, and other equipment boxes and cabinets on Structures;
  8. "Guy Pole" or "Support pole" means a pole that is used primarily to structurally support an electrical or telephone distribution or transmission pole, but has no energized conductors or telephone wires or Facilities attached.
  9. "Mobile Telecommunications Service" means commercial mobile radio service, as defined in Section 20.3 of title 47 of the Code of Federal Regulations as in effect on October 1, 2005.
  10. "Penalties" means any and all monetary penalties provided for in this Agreement.
  11. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

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12. "Streets" or "Rights-of-Way" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow Verizon Wireless to use them.
13. "Structure" means any utility pole, Guy or Support pole, utility pole extension, light standard or other similar pole in the Streets that is suitable for the installation of Facilities. An "Original Structure" is a Structure that has not been replaced to accommodate Facilities.
14. "Telecommunications System" means all necessary Facilities owned or used by Verizon Wireless for the purpose of providing Mobile Telecommunications Services and located in, under and above City Streets, excluding ducts, conduits and vaults leased from another City franchisee, licensee, lessee or permittee.
15. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Agreement.

### Section 3. COMPENSATION AND AUDITING

- A. Amount. As compensation for the benefits and privileges under this Agreement, and in consideration of permission to use the Streets of the City, Verizon Wireless shall pay the following fees to the City through the duration of the Agreement for the right to install Facilities on Structures in the Streets:
  1. The Minimum Annual Fee. The Minimum Annual Fee for this Agreement shall be \$10,000. The Minimum Annual Fee may be applied to the Right-of-Way Use Fee, below, but the combined Minimum Annual and Right-of-Way Use fees shall never be less than \$10,000.
  2. (a) The Right-of-Way Use Fee. The Company shall pay as a Right-of-Way Use Fee \$3148.80 per year per Structure that has any Attached Facilities. If Attached Facilities occupy a Structure for less than one year, the amount of this Fee for that year shall be prorated at \$262.40 per month. If Company places Attached Facilities in the first half of a month, the Company owes the fee for the full month. If Attached Facilities are affixed in the second half of the month, the fee will not be assessed for the remainder of that month. For months with 30 or 31 days the first half of the month is through and including the fifteenth of that month. For February, regardless of leap years, the first half of the month is through and including the fourteenth day of the month;

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(b) The Right-of-Way Use Fee shall increase by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor. This increase is applicable beginning one year after Verizon Wireless files its acceptance in accordance with Section 17 and every year thereafter for the term of this Agreement; and

3. Installation and Application Fee. There shall be a one-time Installation and Application Fee of \$2,000 for each new Site that the company uses for Attached Facilities. A 'Site' is a Base Station (a fixed location with radio equipment used to serve one or more cells) that serves Attached Facilities on up to 10 Structures. An additional Installation and Application Fee will be due for every additional 10 Attached Facilities or portion thereof.

(a) Example: Company constructs a Site and places five Attached Facilities in the streets. One Installation and Application Fee is due. The following year company places an additional four Attached Facilities in the streets which connect to the same base station. No new Installation and Application Fee is due because company has not yet placed more than 10 Attached Facilities for this base station. The following year company places an additional three Attached Facilities in the streets which connect to the same base station. One new Installation and Application Fee is due because the base station serves more than 10 Attached Facilities.

4. Previous Occupancy Fee. This Fee only applies if the Company has had any Attached Facilities prior to the Effective Date of this Agreement. If it has, then it shall pay a Fee based only on the Right-of-Way Use Fee as stated in 2(a), above, for each of those Attached Facilities.

B. Remittance Dates. Verizon Wireless shall pay the above fees as follows:

1. The Annual Fee shall be due and owing on the date Verizon Wireless files its acceptance in accordance with Section 17, and on that same date every calendar year thereafter.
2. The Right-of-Way Fee shall be due and owing on the date Verizon Wireless files its acceptance in accordance with Section 17, and on the same date every calendar year thereafter, provided that the Right-of-Way fee for Facilities that are installed after the Right-of-Way Fee has been paid for a calendar year, shall include the pro-rated payment plus the next calendar year's payment.
3. The Installation and Application Fee shall be due and owing when plans are submitted to the City for approval.

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4. The Previous Occupancy Fee shall be due and owing on the date Verizon Wireless files its acceptance in accordance with Section 17.

C. Late Payments: Any payment not paid when due shall be subject to a delinquency penalty charge of five percent (5%) of the unpaid amount. Failure to make full payment and penalty charges within sixty (60) days of the applicable payment date shall constitute a violation of this Agreement. In addition, all overdue amounts, including penalty charges, shall bear interest, until paid, at the rate of one percent (1%) per month.

D. Acceptance of Payment and Recomputation.

1. No acceptance of any payment made by Verizon Wireless shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within three (3) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the three (3) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. Verizon Wireless agrees to reimburse the City for:

- a. The reasonable costs of such confirmation if the City's recomputation discloses that Verizon Wireless had paid 95% or less of the Agreement fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.
- b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that Verizon Wireless had paid more than 95% but less than 98% of the Agreement fees owing for the period at issue.
- c. The City's costs which may be reimbursed under this Section shall not exceed \$5,000.00 per audit or financial review.
- d. If the City determines that Verizon Wireless made any underpayment, and that the underpayment exceeded 5% of the amount due, Verizon Wireless shall pay late fees pursuant to Section 3.C, above.
- e. If Verizon Wireless disputes the City's determination of underpayment, Verizon Wireless shall immediately place the disputed amount in an escrow account until final resolution.

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2. The City and its agents and representatives shall have authority to arrange for and conduct reviews of Verizon Wireless's records pertaining to this Agreement including those for Facilities Verizon Wireless installed on structures in City rights-of-way and Verizon Wireless's performance bond and insurance policy as required in this Agreement. The City may determine the scope of review in each instance. All amounts paid by Verizon Wireless shall be subject to review by the City, provided that such review be completed within three (3) years from the date payment was due. City requests for reviews shall be in writing. If Verizon Wireless has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Verizon Wireless shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that Verizon Wireless provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Verizon Wireless fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond 30 days that Verizon Wireless fails to provide, or fails to cause to be provided, such requested information.

E. Cost of Pre-Agreement negotiations and Publication. Verizon Wireless has paid the City Five thousand Dollars (\$5,000) for its pre-Agreement costs, including publication of this Agreement, as such publication is required by the City Charter.

#### Section 4. GENERAL INSURANCE AND BONDING PROVISIONS

##### A. Insurance.

1. Verizon Wireless shall maintain commercial general liability insurance that protects Verizon Wireless and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 6. Verizon Wireless shall at all times provide general liability and property liability insurance coverage with liability limits of not less than \$1,000,000 for injury to or death of one or more persons on any one occurrence, and \$500,000 for damage or destruction to property on any one occurrence; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 4(A)(1) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have

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been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Agreement, Verizon Wireless shall provide a replacement policy with the same terms. Verizon Wireless shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Agreement.

2. Verizon Wireless shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be subject to the approval as to form by the City Attorney.
3. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, Verizon Wireless may provide the City with a statement regarding its self-insurance. Verizon Wireless's self-insurance shall provide at least the same amount and scope of coverage for Verizon Wireless and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the approval as to form by the City Attorney. Upon Verizon Wireless's election to provide self-insurance coverage under this Section 4(A)(3), any failure by Verizon Wireless to maintain adequate self-insurance shall be a material violation of this Agreement.

**B. Faithful Performance Bond.**

1. Upon the effective date of this Agreement, Verizon Wireless shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of ten thousand dollars (\$10,000), conditioned that Verizon Wireless shall well and truly observe, fulfill, and perform each term and condition of this Agreement. Verizon Wireless shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Agreement, including, if necessary, the time required for removal of all of Verizon Wireless's Facilities installed in the City's Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City Auditor. The bond shall be subject to the approval as to form by the City Attorney.
2. During the term of this Agreement, Verizon Wireless shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4(B) if a bona fide, good faith dispute exists between the City and Verizon Wireless.

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- C. Construction Bond. During all times when Verizon Wireless is performing any construction work in or under the Streets requiring a street opening permit, Verizon Wireless shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of ten thousand dollars (\$10,000). The bond or letter of credit shall be conditioned that Verizon Wireless shall well and truly observe, fulfill and perform each term and condition under Section 6. Verizon Wireless shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Verizon Wireless's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Verizon Wireless shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the approval as to form by the City Attorney.

#### Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS

- A. General Indemnification. Verizon Wireless hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Agreement, by or for Verizon Wireless, its agents or employees, or by reason of any neglect or omission of Verizon Wireless to keep its Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Verizon Wireless with prompt notice of any such claim, which Verizon Wireless shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Verizon Wireless. Verizon Wireless and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.
- B. Relocation Indemnification. Verizon Wireless also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Verizon Wireless's failure to remove, adjust or relocate any of its Facilities in the City Streets in a timely manner in accordance with a relocation schedule furnished to Verizon Wireless by the City Engineer under this Agreement, unless Verizon Wireless's failure arises directly from the City's negligence or willful misconduct.

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## Section 6. CONSTRUCTION, REPLACEMENT, REPAIRS AND MAINTENANCE

- A. Permits. Verizon Wireless shall apply for and obtain all permits necessary for the construction, installation and operation of its Facilities in the Streets. Verizon Wireless shall pay all applicable fees due for City construction permits. All construction and maintenance of any and all Verizon Wireless's Facilities within the Streets incident to Verizon Wireless's provision of Mobile Telecommunications Services shall, regardless of who performs installation and/or construction, be and remain the responsibility of Verizon Wireless.
- B. Installation of Equipment. Verizon Wireless's Facilities shall be installed and maintained in accordance with the laws of the State of Oregon and the ordinances and standards of the City regulating such construction.
- C. Common Users. Verizon Wireless's Facilities shall be attached to Structures located within the Streets. Verizon Wireless shall also allow and encourage other wireless carriers to co-locate facilities on Structures with Verizon Wireless's Facilities, provided such co-location does not interfere with Verizon Wireless's Facilities or jeopardize the physical integrity of the Structure and provided the owner of the Structure consents to such co-locations.
- D. Scale of Facilities. This section establishes standards for attaching Facilities to Structures in the Streets in a manner that minimizes the Facilities' potential incompatibility with adjacent uses. Nothing in this section modifies or supercedes other City requirements for these Facilities, such as Title 33 of the Portland City Code, also known as the Zoning Code.
1. Original Structures. Facilities may be attached to Original Structures in the Streets, provided:
    - a. Facilities do not jeopardize the physical integrity of the Structure;
    - b. Three sector arrays, also known as triangular "top hat" style antenna mounts, are prohibited;
    - c. The device used to mount the Facilities does not project more than ten (10) feet above the Structure;
    - d. Antennas will be mounted flush with the device referenced in Section 6(D)(1)(c) or the existing structure, within a unicell-style top cylinder, or on davit arms that are no greater than five (5) feet in length as measured from the center of the Structure;

- e. The visual impacts of any Facilities located in the Streets must be minimized by utilizing the smallest antennas, equipment and equipment cabinets available that will satisfy engineering requirements and the service objectives of the site. Whenever possible, Facilities shall be painted or otherwise treated architecturally so as to minimize visual impacts;
  - f. All antennas, cabling, mounting hardware and associated microcell/equipment cabinets mounted on an Original Structure must be painted to match the color of the Structure. If cabinets require a special heat-reducing paint finish, they must be a neutral color such as beige, off-white, or light gray; and
  - g. The Original Structure is not replaced with a taller Structure, except as authorized in Sections 6.D.2.
2. Replacement Structures. For purposes of this Section "Replacement Structure" shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility, guy or support poles in the Streets. Facilities may be attached to Replacement Structures in the Streets, provided:
- a. The Replacement Structure is of sufficient integrity to support the Facilities;
  - b. The requirements of 6.D.1.b, e and f are met;
  - c. The device used to mount the Facilities does not project more than ten (10) feet above the top of the Replacement Structure;
  - d. Antennas will be mounted flush with the Replacement structure, within a unicell-style top cylinder, or on davit arms that are no greater than five (5) feet in length as measured from the center of the Structure;
  - e. In Streets designated by current Official Zoning Maps of Title 33, Portland City Code, with a base zone of either R (residential) or OS (open space), any Replacement Structure, and any subsequent Replacement Structures, is never more than ten (10) feet taller than the Original Structure. In general, street centerlines are also the established boundaries for base zones, but Verizon Wireless must consult the current zoning map to determine the base zone in which a Replacement Structure will be installed;
    - i. When the Original Structure is a Guy Pole, the height of the Original Structure may be increased by the lesser of either a) twenty feet over the existing height of the Guy Pole; or b) ten feet over the height of the Structure the Guy Pole supports.

For example, a 20 foot Guy Pole supporting a 30 foot utility pole may be extended to 40 feet when the Guy Pole is in an R or OS base zone;

- f. In Streets designated by current Official Zoning Maps of Title 33, Portland City Code, with a base zone other than R or OS, any Replacement Structure, and any subsequent Replacement Structures, is no more than twenty (20) feet over the height of the Original Structure;
    - i. If the structure being replaced is a Guy pole it may be up to twenty (20) feet taller than the height of a structure that a Guy Pole supports. In general, street centerlines are also the established boundaries for base zones, but Verizon Wireless must consult the current zoning map to determine the base zone in which a Replacement Structure will be installed; and
  - g. The Replacement Structure is no taller than eighty (80) feet.
3. Verizon Wireless shall not locate any Facilities, such as cabinets, at grade within the Streets, but may connect its Facilities in the Streets to Facilities located on property adjacent to the Streets in accordance with applicable City codes and with the permission of the adjacent property owner.
  4. Verizon Wireless may make excavations in the City Streets for any Facility needed for the maintenance or extension of its Mobile Telecommunications System, subject to obtaining permits from the City. Prior to doing such work, Verizon Wireless must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
  5. In the event that emergency repairs are necessary for Verizon Wireless' underground Facilities in the Streets, Verizon Wireless shall immediately notify the City of the need for such repairs. Verizon Wireless may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Verizon Wireless must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
  6. Locates. Verizon Wireless shall comply with the requirements of the Oregon Utility Notification Law, codified at ORS 757.542 to 757.562 and 757.993 (2005), and the rules and regulations promulgated thereunder.

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E. Relocation.

1. The City shall have the right to require Verizon Wireless to change the location of its Facilities in the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by Verizon Wireless. The City shall provide Verizon Wireless with the standard notice given under the circumstances to other Leasees, franchisees, licensees, or permittees. Should Verizon Wireless fail to remove or relocate any such Facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Verizon Wireless, including all expenses incurred by the City due to Verizon Wireless's delay. If the City requires Verizon Wireless to relocate its facilities located within the City's Streets, the City will make a reasonable effort to provide Verizon Wireless with an alternate location for its facilities within the City's Streets.
2. The provisions of this Section 6.E. shall in no manner require or preclude Verizon Wireless from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity, other than the City where the Facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained Facilities.

F. Record of Installations.

1. On the date Verizon Wireless files its acceptance in accordance with Section 17, and annually thereafter, in the event any new Facilities are constructed or any existing Facilities are relocated, Verizon Wireless shall provide to the City's Office of Cable Communications and Franchise Management, or its successor, a list that identifies the location of Verizon Wireless's Facilities in the Streets. In addition, Verizon Wireless shall file a Radio Frequency Transmission Facility Registration Form, made available by the City, for each existing and new Facility that is installed on Structures in the Streets. For existing Facilities, the form shall be filed on the date Verizon Wireless files its acceptance in accordance with Section 17, and every two years thereafter. For new Facilities, the form shall be filed within ten (10) days of the date the Facility is attached to the Structure in the City Streets, and every two years thereafter.
2. Within thirty (30) days following Verizon Wireless' acquisition of any Facilities in the Streets, or upon any addition or annexation to the City of any area in which Verizon Wireless retains any such Facilities in the Streets, Verizon Wireless shall submit to the City a written statement describing all Facilities involved, whether authorized by agreement, license, permit or any other form of prior right, and specifying the location of all such Facilities. Facilities acquired by Verizon Wireless shall immediately be subject

to the terms of this Agreement, within a reasonable period of time to bring such acquired Facilities into compliance with this Agreement.

3. Radio frequency emission levels. All existing and proposed Radio Frequency Transmission Facilities are prohibited from exceeding or causing other facilities to exceed the radio frequency emission standards specified in Section 1.1310 of Title 47 of the Code of Federal Regulations as in effect on October 1, 2005.

G. Restoration After Construction. Verizon Wireless shall, after construction, maintenance or repair of Facilities, leave the Streets in as good or better condition in all respects as it was before the commencement of such construction, maintenance or repairs, excepting normal wear and tear. Verizon Wireless agrees to promptly complete restoration work and to promptly repair any damage caused by such work at its sole cost and expense. When any opening is made by Verizon Wireless in a hard surface pavement in any Street, Verizon Wireless shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer. All excavations made by Verizon Wireless in the Streets shall be properly safeguarded for the prevention of accidents. All of Verizon Wireless's work under Section 6 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

H. Tree Pruning.

1. After obtaining a written permit from the City Forester, Verizon Wireless may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with Verizon Wireless's Facilities. Permit requirements for pruning are located in Portland City Code Chapter 20.40.080(E), or by contacting the City Forester's Office. Except in emergencies, Verizon Wireless may not prune trees at a point below 30 feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For the purposes of this Section 6.H, an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant of the premises abutting the Street shall have seven days from receipt of Verizon Wireless' notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Verizon Wireless may prune such tree at its own expense.
2. The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if Verizon Wireless adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Verizon Wireless shall be subject to the approval of the City Forester. The

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City Forester shall have the discretion to cancel the permit if, at any time, Verizon Wireless or its agents, fails to use proper arboricultural practices.

#### Section 7. RESERVATION OF CITY STREET RIGHTS

Nothing in this Agreement shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of Verizon Wireless's Facilities in the Streets. However, if any of Verizon Wireless's Facilities interfere with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Verizon Wireless's Facilities shall be removed or replaced in the manner the City shall direct in accordance with Section 6.E.; provided, however, the City will cooperate with Verizon Wireless to identify alternate locations within the Streets. Any and all such removal or replacement shall be at the expense of Verizon Wireless. Should Verizon Wireless fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Verizon Wireless, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Verizon Wireless, including all costs and expenses incurred by the City due to Verizon Wireless's delay.

#### Section 8. STREET VACATION

If any Street or portion thereof used by Verizon Wireless is vacated by the City during the term of this Agreement, unless the City Council specifically reserves to Verizon Wireless the right to continue its installation in the vacated Street, Verizon Wireless shall, without expense to the City, forthwith remove its Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no better than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of Verizon Wireless, after thirty (30) days' notice by the City, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Verizon Wireless which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall cooperate with Verizon Wireless to identify alternative locations within the Streets.

#### Section 9. MAINTENANCE OF FACILITIES

Verizon Wireless shall provide and put in use all Facilities necessary to control and carry Verizon Wireless's Mobile Telecommunications Services so as to prevent injury to the City's property or property belonging to any Person within the City. Verizon Wireless, solely at its

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own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Verizon Wireless shall not construct its Telecommunications System in a manner that requires any customer, except the City, or any entity permitted by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.

#### Section 10. DISCONTINUED USE OF FACILITIES

- A. Whenever Verizon Wireless intends to discontinue use of its Facilities within all or part of a particular portion of the Streets and does not intend to use said Facilities again for six months, Verizon Wireless shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which Verizon Wireless intends to discontinue using the Facility. Verizon Wireless may remove the Facility or request that the City permit it to remain in place. If Verizon Wireless is permitted to abandon its Facilities in place, upon consent of the City, the ownership of Facilities in the Streets shall transfer to the City and Verizon Wireless shall have no further obligation or liability therefor. Notwithstanding Verizon Wireless's request that any such Facility remain in place, the City Engineer may require Verizon Wireless to remove the Facility from the Streets or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Verizon Wireless to perform a combination of modification and removal of the Facility; provided, however, that Verizon Wireless may elect to remove its Facility entirely in the event the City requests any modification. Verizon Wireless shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Verizon Wireless removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another person having authority to construct and maintain such Facility, Verizon Wireless shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance and restoration of the Streets, in the same manner and degree as if the Facility were in active use, and Verizon Wireless shall retain all liability for such Facility.
- B. If Verizon Wireless discontinues use of Facilities on a Replacement Structure, and that Replacement Structure is taller than the Original Structure, the Company will return the Replacement Structure to its original height. In the alternative, after proper notice pursuant to this Agreement, the Company may request, and the City may grant at its discretion, a waiver from this requirement. If the City requests that the Structure be replaced with a Structure of the original height, the City shall give Verizon Wireless at least ninety (90) days to replace the Structure.

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Section 11. HAZARDOUS SUBSTANCES:

- A. Compliance. Verizon Wireless shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Verizon Wireless's Mobile Telecommunications System in the Streets. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(16) (2005).
- B. Maintenance and Inspection. Verizon Wireless shall maintain and inspect its Facilities located in the Streets. Upon reasonable notice to Verizon Wireless and in the presence of an authorized representative of Verizon Wireless, the City may inspect Verizon Wireless's Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Verizon Wireless's Telecommunications System.
- C. Remediation. In removing or modifying Verizon Wireless' Facilities as provided in this Agreement, Verizon Wireless shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto. Upon request, the City shall provide Verizon Wireless with information within the City's possession which identifies potentially responsible parties for the purposes of recovering such removal costs.
- D. Indemnification. Verizon Wireless agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by Verizon Wireless's ownership or operation of Facilities in the Streets.

Section 12. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE

- A. Consent. Except as otherwise permitted by Section 12.B. and except to entities that control, are controlled by, or are under common control with Verizon Wireless, neither this Agreement nor any of Verizon Wireless's Facilities located in the Streets by authority of this Agreement shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, Verizon Wireless shall give written notice to the City of any transfers to entities under common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section 12.A. shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Verizon Wireless Telecommunications System for the purpose of financing the acquisition of equipment for or the construction and operation of Verizon Wireless's Telecommunications System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Agreement.

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1. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Verizon Wireless shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Agreement, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.
  2. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Verizon Wireless shall file with the Auditor an executed counterpart or certified copy thereof.
- B. Transfers Without Consent in Ordinary Course of Business. Verizon Wireless shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 12.A., hereof, Verizon Wireless may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Verizon Wireless remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of Verizon Wireless's Facilities shall not obtain any rights under this Agreement. For the purposes of this Subsection, a capital lease shall be treated as a lease under this Subsection until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under Section 12.B.1.
1. Notwithstanding Section 12(A)(1), Verizon Wireless may sell portions of its Facilities in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Verizon Wireless complies with the following conditions:
    - a. The sale is to the holder of a current existing, valid telecommunications or mobile telecommunications agreement, franchise, permit or lease with the City.
    - b. Within fourteen days of the sale being executed and becoming final, Verizon Wireless shall provide written notice to the City, describing the Facilities sold by Verizon Wireless, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6.F.1.), and providing an executed counterpart or certified copy of the sales documents.

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- c. Verizon Wireless remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Facilities.
- d. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid Agreement. The purchaser shall not obtain any of Verizon Wireless's rights under this Agreement.

### Section 13. FORFEITURE AND REMEDIES

A. Forfeiture. In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of the Agreement, and all of Verizon Wireless's rights arising thereunder, in the event that:

- 1. Verizon Wireless violates any material provision of the Agreement.
  - a. For purposes of this Section, the following are material provisions of this Agreement, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Agreement:
    - (1) The invalidation, failure to pay or any suspension of Verizon Wireless's payments of Fees to the City for use of the Streets under this Agreement;
    - (2) Any failure by Verizon Wireless to submit timely reports regarding the calculation of its Agreement Fees to the City;
    - (3) Any failure by Verizon Wireless to maintain the liability insurance required under this Agreement;
    - (4) Any failure by Verizon Wireless to maintain the performance bond required under this Agreement;
    - (5) Any failure by Verizon Wireless to otherwise fully comply with the requirements of Sections 3 through and including Section 17 of this Agreement.
- 2. Verizon Wireless is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
- 3. There is a final determination that Verizon Wireless has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Verizon Wireless's operation of its Mobile Telecommunications System or Services within the City.

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- B. Additional Remedies. In addition to any rights set out elsewhere in this Agreement, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:
1. Impose a financial penalty of up to \$1,000.00 per violation;
  2. Suspend Verizon Wireless's rights under this Agreement, until Verizon Wireless corrects or otherwise remedies the violation;
  3. Revocation. The City Council or Verizon Wireless may revoke this Agreement in the event that any provision becomes invalid or unenforceable and the City Council or Verizon Wireless expressly finds that such provision constituted a consideration material to the Agreement. The City or Verizon Wireless shall exercise its revocation rights under this subsection by providing 30 days written notice prior to the effective date of the revocation, and an opportunity to renegotiate acceptable provisions in accordance with Section 14.
- C. Determination of Remedy. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.
- D. Notice and Opportunity to Cure. The City shall give Verizon Wireless thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Verizon Wireless cures the stated reason within the thirty (30) day notice period, or if Verizon Wireless initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Verizon Wireless fails to cure the stated reason within the thirty (30) day notice period, or if Verizon Wireless does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and Verizon Wireless.

#### Section 14. RENEGOTIATION

In the event that any provision of this Agreement becomes invalid or unenforceable and the City Council or Verizon Wireless expressly finds that such provision constituted a consideration material to entering into this Agreement, the City and Verizon Wireless may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both

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parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 15. EXPIRATION AND RENEWAL:

A. Renewal. Upon the expiration of the initial three year term of this Agreement, on application made by Verizon Wireless for Agreement renewal or additional authority to exercise the privileges, or any of them, hereby granted, Verizon Wireless shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If Verizon Wireless does not promptly apply for such renewal or additional authority, or if Verizon Wireless rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Agreement, grant a permit or Agreement to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to Verizon Wireless, at or before the time such new or additional authority takes effect, and before Verizon Wireless shall be deprived of the right to possess, maintain and operate its Telecommunications System located within the Streets, the fair and equitable valuation of Verizon Wireless's Telecommunications System located within the Streets. If the third party and Verizon Wireless cannot agree on the fair and equitable value of said Telecommunications System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, Verizon Wireless's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Agreement.

Section 16. MISCELLANEOUS

A. Compliance with Laws.

1. Both Verizon Wireless and the City shall comply with all applicable federal and state laws.
2. Verizon Wireless shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

B. Severability. If any Section, provision or clause of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Agreement shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Agreement in the public interest. Verizon Wireless shall not be relieved of its obligations to comply with any of the provisions of this Agreement by reason of any failure of the City to

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enforce prompt compliance, nor does the City waive or limit any of its rights under this Agreement by reason of such failure or neglect.

D. Force Majeure.

1. For purposes of this Section 16.D., the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.
2. If Verizon Wireless is wholly or partially unable to carry out its obligations under this Agreement as a result of Force Majeure, Verizon Wireless shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Verizon Wireless's obligations under this Agreement, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Verizon Wireless agrees to use its best efforts to remedy as soon as possible, under the circumstances, Verizon Wireless's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Agreement.

E. Choice of Forum. Any litigation between the City and Verizon Wireless arising under or regarding this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

F. Notice. Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

1. If to the City:                   Office of Cable Communications and Franchise Management  
  City of Portland, Oregon  
  1120 SW 5th Avenue, Room 1305  
  Portland, Oregon 97204  
  FAX (503) 823-5370

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With a copy to: City Attorney's Office  
City of Portland  
Room 430, City Hall  
1221 SW 4th Avenue  
Portland, Oregon 97204  
FAX (503) 823-3089

2. If to Verizon Wireless: Verizon Wireless  
Attn: Network Real Estate  
180 Washington Valley Road  
Bedminster, NJ 07921  
FAX (908) 607-8860

With a copy to: Verizon Wireless  
Real Estate Department  
3350 161<sup>st</sup> Avenue SE, M/S 211  
Bellevue, WA 98008  
FAX (425) 603-2888

3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

- G. Confidential Records. Verizon Wireless may identify information submitted to the City as confidential. Prior to submitting such information to the City, Verizon Wireless shall prominently mark in conspicuous letters any information with the word "Confidential." The City shall treat any information so marked as confidential and not subject to public disclosure until the City receives any public records request for disclosure of such information. Within ten (10) working days of receiving any such request, the City shall provide Verizon Wireless with written notice of the request, including a copy of the request. Verizon Wireless shall have ten (10) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. Whether Verizon Wireless submits any written response to the City, the City shall retain the final discretion to determine whether to release the requested confidential information, provided the City shall give Verizon Wireless at least ten (10) working days written notice after receipt of any response from Verizon Wireless prior to releasing such information. Verizon Wireless does not waive any of its rights to seek a protective order from a court of competent jurisdiction restraining the City from disclosing such information.

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#### H. Public Records.

1. Some information submitted by Verizon Wireless to the City may be relevant to Verizon Wireless's obligation to pay Agreement fees or Compensation. Requiring such information to be submitted to the City in order to determine fees or Compensation payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (2005) of the Oregon Public Records Law.
2. Some information submitted by Verizon Wireless to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving Verizon Wireless a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under ORS 192.501(2) (2005) of the Oregon Public Record Law.
3. Identification of these exemptions under the Oregon Public Records Law, which may apply to information submitted by Verizon Wireless to the City, is not an exhaustive list of those possibly applicable to such information.

I. Amendment. The City has negotiated this Agreement in good faith, in reliance upon the information provided by Verizon Wireless regarding the scope of its authority to offer the Mobile Telecommunications Services described in Section 2.B.9 above. In the event that Verizon Wireless actually receives authority to offer telecommunications services outside the scope of this Agreement, or otherwise begins offering telecommunications services outside the scope of those identified in Section 2.B.9, Verizon Wireless shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with Verizon Wireless to revise or amend this Agreement to reflect such changed circumstances, or may proceed with early termination of this Agreement. The parties will negotiate in good faith to revise the Agreement to authorize the expanded scope of services.

J. Interference. Company shall, at its expense, comply with all Federal Communications Commission Radio Frequency requirements in connection with the use, operation, maintenance, construction and/or installation of its Facilities. If at any time during the Company's occupancy of the transmission location, it is determined by the Portland Bureau of Technology Services ("BTS") that the Company's transmission facilities are negatively impacting the City's communication facilities, Company agrees to cooperate with BTS in addressing the negative impact. Company agrees to temporarily shut off power and transmission to and from the transmission facility that is causing a problem until the problem is resolved, provided that the City agrees to cooperate with and assist the Company in installing a temporary replacement facility so as to avoid disruption of Company's service.



K. Release of Claims. The City hereby releases all claims to compensation it may have against Verizon Wireless associated with Verizon Wireless's placement of Facilities in the Streets prior to the effective date of this Agreement, provided that this release does not relieve Verizon Wireless of its obligation to pay the Previous Occupancy Fee and to comply with all other terms and conditions of this Agreement for all Facilities and Attached Facilities in the Streets.

Section 17. WRITTEN ACCEPTANCE

On or before the thirtieth (30th) day after this ordinance becomes effective, Verizon Wireless shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by Verizon Wireless, subject to the approval as to form by the City Attorney. Any failure on the part of Verizon Wireless to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

Section 18. OTHER AUTHORITY SUPERSEDED:

Upon effectiveness of this Agreement, any and all authority to operate Facilities or Attached Facilities in the Streets previously granted to Verizon Wireless by the City shall be superseded by this Agreement.

Passed by the Council: Aug 16 2006  
Commissioner Dan Saltzman  
Soloos/Walters  
June 19, 2006

**Gary Blackmer**  
Auditor of the City of Portland  
By Susan Parsons /s/  
Deputy

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## ORDINANCE No.

Amend and extend term of limited right-of-way use agreement granted to Verizon Wireless  
(Ordinance; amend Ordinance No. 180379)

### Section 1. The Council finds:

1. In July, 2002, the Council approved a template for right-of-way agreements for wireless companies seeking to place antennae on existing or taller replacement utility poles in the streets. Resolution No. 36089. The resolution implemented a policy of co-location, requiring wireless companies to try to place antennae on existing buildings or structures before building cell towers in neighborhoods. The terms and conditions of the right-of-way agreement were established after a public involvement process, and were designed to balance the need for wireless service with the need to retain the character of neighborhoods.
2. In 2006, the Council granted a limited right-of-way use agreement to Verizon Wireless to build and operate wireless facilities within the City's streets following the template adopted by Resolution No. 36089. Ordinance No. 180379.
3. From 2006 to 2009 City staff worked with City bureaus and the public, as well as representatives of the wireless industry and utility pole owners, in an effort to standardize and modernize the terms and conditions of all wireless right-of-way agreements. In 2009 the wireless right-of-way agreements except Verizon Wireless' were amended and extended.
4. Verizon Wireless has asked City staff for an amendment of its limited right-of-way use agreement to conform to the terms and conditions of the agreements the City has with other wireless carriers, and to extend the term of the Verizon agreement.

NOW, THEREFORE, the Council directs:

- a. Section 1.B of Ordinance No. 180379 is hereby amended to extend the term of the limited right-of-way use agreement, continuously and without interruption, through June 30, 2014.
- b. Section 3.A of Ordinance No. 180379, addressing compensation, is amended by substituting the language in Section 3.A as set forth in the attached Exhibit A.
- c. Section 6.D of Ordinance No. 180379, addressing the terms and conditions of equipment and replacement utility poles, is amended by substituting the language in Section 6.D. as set forth in the attached Exhibit A.

- d. All other terms and conditions of Ordinance No. 180379 remain the same and in full force and effect.
- e. On or before the thirtieth (30th) day after this ordinance becomes effective, Verizon Wireless shall file in the Office of the Auditor of the City of Portland a written acceptance of this Ordinance, executed by Verizon Wireless, subject to the approval of as to form by the City Attorney. Any failure on the part of Verizon Wireless to file such written acceptance within such time shall be deemed an abandonment and rejection of this Ordinance, and this Ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Ordinance.

Passed by the Council:

**LaVonne Griffin-Valade**  
Auditor of the City of Portland  
By

Prepared by: Commissioner Amanda Fritz  
DSoloos/BEWalters  
July 1, 2010

Deputy

**Amendments to Verizon Wireless Limited Right-of-Way Use Agreement  
Ordinance No. 180379**

**As an amendment to existing Section 3.A of Ordinance No. 180379, substitute the following:**

- A. Amount. As compensation for the benefits and privileges under this Agreement, and in consideration of permission to use the Streets of the City, Verizon Wireless shall pay the following fees to the City through the duration of the Agreement for the right to install Facilities on Structures in the Streets:
1. The Minimum Annual Fee. The Minimum Annual Fee for this Agreement shall be \$10,000. The Minimum Annual Fee may be applied to the Right-of-Way Use Fee, below, but the combined Minimum Annual and Right-of-Way Use fees shall never be less than \$10,000.
  2. (a) Right-of-Way Use Fee. The Company shall pay as a Right-of-Way Use Fee \$5,000 per year per Structure that has any Attached Facilities. If Attached Facilities occupy a Structure for less than one year, the amount of this Fee for that year shall be prorated at \$417.00 per month. The Right-of-Way Use Fee is calculated from the first day of the month following the date Attached Facilities are installed on a Structure;  
  
(b) The Right-of-Way Use Fee shall increase by the Consumer Price Index for Urban Age Earners and Clerical Workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor. This increase is applicable beginning one year after the Effective Date of this Agreement and every year thereafter for the term of this Agreement.
  3. Installation and Application Fee.  
  
(a) There shall be a one-time Installation and Application Fee of \$2,000 payable to the Portland Bureau of Transportation for each new Site that the company uses for Attached Facilities. A 'Site' is a Base Station (a fixed location with radio equipment used to serve one or more cells) that serves Attached Facilities on up to 10 Structures. An additional Installation and Application Fee will be due for every additional 10 Attached Facilities or portion thereof.  
  
(i) Example: Company constructs a Site and places five Attached Facilities in the streets. One Installation and Application Fee is due. The following year company places an additional four Attached Facilities in the streets which connect to the same base station. No new Installation and Application Fee is due because company has not yet placed more than 10 Attached Facilities for this base station. The following year company places an additional three Attached Facilities in the streets which connect to the same base station. One new Installation and Application Fee is due because the base station serves more than 10 Attached Facilities.

(b) If the Attached Facilities will be placed on a Structure in a Priority 4 Street, then there shall be a separate one-time fee of \$2,000 payable to the Office of Cable Communications and Franchise Management.

4. Previous Occupancy Fee. This Fee only applies if the Company has had any Attached Facilities prior to the Effective Date of this Agreement. If it has, then it shall pay a Fee based only on the Right-of-Way Use Fee as stated in 2(a), above, for each of those Attached Facilities.

**As an amendment to existing Section 6.D of Ordinance No. 180379, substitute the following:**

D. Facility and Structure standards. This section establishes standards for attaching Facilities to Structures in the Streets.

Unless otherwise specified, all references in this subsection 6.D to the existing or allowed height of a Structure or utility pole are measured from ground level.

1. Structure selection

- a. Verizon Wireless shall site wireless facilities on existing Structures before placing them on Structures in the Streets. Existing Structures include but are not limited to buildings, water tanks, and cell towers, as well as utility poles located on City-owned property.
- b. All of Portland's streets are prioritized for siting wireless facilities on Structures. The categories for streets within the City may be identified by referring to the City's official map of Wireless Street Priorities. Verizon Wireless must use poles in the following order of priority:
  - i. Priority 1 Streets (generally freeways, highways, and streets in industrial areas), before using poles on
  - ii. Priority 2 Streets (generally high traffic volume streets), before using poles on
  - iii. Priority 3 Streets (generally medium traffic volume streets), before using poles on
  - iv. Priority 4 Streets (generally low traffic volume residential streets).

If Verizon Wireless selects a Structure to support its facilities on a Priority 4 street, Verizon Wireless shall provide RF contour maps (in color) illustrating the calculated coverage using the proposed antennas at the target signal level, plus and minus 5 dB, and the calculated coverage areas for all existing adjacent cell sites, to support the rejection of other structures. If other structures were ruled out for non-RF coverage reasons, Verizon Wireless shall identify and explain those reasons.

- c. For all Structures except those in Priority 1 Streets, Verizon Wireless must place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this subsection 6.D, "high voltage transmission" means lines with capacity for transmitting electricity of 57,000 volts or greater.

2. Original Structures. Facilities may be attached to Original Structures in the Streets, provided:
  - a. The requirements in 6.D.1 are met;
  - b. Facilities do not jeopardize the physical integrity of the Structure;
  - c. Antennas and antenna mounting devices below the top of the Structure shall be mounted flush with the Structure or on extension arms that are no greater than one (1) foot in length.
  - d. Antennas and antenna mounting devices above the top of the Structure:
    - i. Mounting devices and antennas other than omni-directional, or “whip” antennas shall be concealed within a canister or unicell-style cylinder, the diameter of which shall be no greater than twelve inches (12”) more than the diameter of the Structure as measured six (6) feet from the butt of the Structure.
    - ii. The combined height of the antennas and mounting device on a Structure that carries high voltage transmission lines shall not project more than:
      - A. Twenty (20) feet above the Structure if the Structure is in a Priority 2 or 3 Street.
      - B. Fifteen (15) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) less than or equal to fifty (50) feet in height; or
      - C. Twenty (20) feet above the Structure if the Structure is 1) in a Priority 4 Street, and 2) more than fifty (50) feet in height.
      - D. The combined height of the antenna and mounting device on Structures in Priority 1 Streets is not regulated.
    - iii. The combined height of the antennas and mounting device on a Structure that does not carry high voltage transmission lines shall not project more than:
      - A. Fifteen (15) feet above a Structure in a Priority 2 or 3 Street; or
      - B. Ten (10) feet above a Structure in a Priority 4 Street.
      - C. The combined height of the antennae and mounting device on Structures in Priority 1 Streets is not regulated.
  - e. All Facilities mounted on an Original Structure shall be painted, coated, or given a surface application to conform to the color and surface of the Structure. If cabinets require a special heat-reducing paint finish, they must be a neutral color such as beige, off-white, or light gray; and
  - f. The dimensions of equipment cabinets mounted on poles in Priority 1, 2, and 3 Streets are not regulated. The height plus width plus depth of equipment cabinets mounted on poles in Priority 4 Streets shall be no more than 120 lineal inches combined.
  - g. The Original Structure is not replaced with a taller Structure, except as authorized in Sections 6.D.3.

3. Replacement Structures. For purposes of this Section “Replacement Structure” shall mean a Structure that a) replaces an existing Structure or Original Structure to accommodate Facilities; and b) does not result in an increase in the total number of utility or guy poles in the Streets. Facilities may be attached to Replacement Structures in the Streets, provided:
- a. The Replacement Structure is of sufficient integrity to support the Facilities;
  - b. The Replacement Structure must comply with the requirements of 6.D.1.a, b and c, and 6.D.2.e and f;
  - c. For all Structures except those in Priority 1 Streets, Verizon Wireless shall place antennas and Facilities first on Structures that carry high voltage transmission power lines before placing them on any other Structure. For the purposes of this subsection, “high voltage transmission” means either power lines with capacity for transmitting electricity of 57,000 volts or greater, or a skipped pole between high voltage transmission power lines. Skipped poles are defined in subsection 6.D.3.e.ii, below.
  - d. Color. Prior to installation, if the Replacement Structure is not made entirely of wood, it shall be painted, coated, or given a surface application to conform to the color of the Original Structure.
  - e. Replacement Height Limits. A Structure or Original Structure may be replaced with a Replacement Structure that is taller than the Original Structure. The total combined height of a Replacement Structure and any mounting devices shall be no greater than that allowed in Table 1, below.
    - i. Guy poles. Guy poles are shorter than the utility poles they support. On Priority 1, 2, and 3 streets a guy pole may be replaced as if it is the same height as the pole it supports using Table 1, below. On Priority 4 streets a Guy pole can be replaced up to the height of the pole it supports.

Example 1: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 3 Street may be replaced as if it is 30’ tall. Therefore, it can be replaced with a pole 45 feet tall (30’ + 50% of 30’);

Example 2: A 20 foot guy pole that supports a 30 foot utility pole in a Priority 4 Street may be replaced up to a maximum of 30 feet.
    - ii. Skipped poles. There are Streets where runs of taller poles (typically high voltage transmission) and shorter poles (typically low voltage distribution or communication) are located on the same side of the Street. Where the shorter pole is situated adjacent and between two taller poles in the same run, the shorter pole is known as a “skipped pole.” A skipped pole may be replaced with a pole of the same height as the adjacent taller poles.

Example: A 45 foot (45’) pole is situated adjacent and between two 65 foot (65’) poles on the same side of a Priority 4 Street. The 45’ pole can be replaced as if it were 65’

using Table 1, below. Therefore, it can be replaced with a pole 80 feet tall (65' + 15'). If the 45' pole is on the opposite side of the Priority 4 Street from the taller poles, it cannot be replaced as if it were 65'; it can only be replaced up to a height of 60 feet (45' + 15').

Table 1

Maximum Combined Additional Height Allowed for Replacement Structures and Antenna Mounting Devices (All figures are in feet over the height of the existing Structure measured from ground level)	
Street Type	Additional Height
Priority 1 (freeways, highways, and streets in industrial areas)	80'
Priority 2 (high traffic volumes)	Lesser of 40' or 50% of the height of the pole
Priority 3 (medium traffic volumes)	Lesser of 35' or 50% of the height of the pole
Priority 4 (low traffic volumes; residential streets)	Lesser of 15' or 45% of the height of the pole

- f. Antennas above the top of the Replacement Structure and Mounting Device. Antennas and antenna mounting devices shall be mounted flush with the Replacement Structure or on extension arms that are no greater than one (1) foot in length. Antennas shall not project more than three (3) feet above the maximum allowable height of the Replacement Structure and mounting device. Example: A 35 foot pole on a Priority 4 Street may be replaced with a pole and mounting device, the top of which is no more than 50 feet tall, and the measurement to the top of the antennas may be no more than 53 feet.
- g. Replacement Structure Engineering. In the event that a Structure needs to be replaced to provide structural capacity to support the Facility, Verizon Wireless must provide to the City a written statement from the pole owner that the Replacement Structure is no greater in width than the engineering minimum required by the Oregon Public Utility Commission.
- h. Street Trees. If a Structure in a Priority 4 street is proposed for replacement, Verizon Wireless shall submit the sum of One Thousand Dollars (\$1,000) to the Bureau of Parks to fund street tree planting. Verizon Wireless shall consult with the owner of the Structure and the Bureau of Parks to determine if a tree could be planted in the parking strip such that a mature tree canopy could develop around the Replacement Structure to reduce the visual impact of the Replacement Structure to the abutting property. If a tree cannot be planted with this result, then the Park Bureau shall deposit the funds into the Tree Damage Fund for its use.
- i. Notice and Meeting. When Facilities are proposed on an existing or Replacement Structure that is in or within 400 feet of a Priority 4 Street, Verizon Wireless shall provide written notice and participate in or conduct a meeting as follows:



- A. Verizon Wireless will provide written notice to residents and property owners within a 400 foot radius of the existing or Replacement Structure. The notice shall: clearly state the name of the wireless carrier directing the work and what work will occur; identify the Structure or Replacement Structure, identify the Facilities that will be added; identify when the change is scheduled to begin and end; provide a contact name and telephone number of a representative of the wireless carrier, the pole owner, and the City of Portland; provide the date, time and location of a meeting to present and discuss the changes; and be sent no less than 14 days and no more than 30 days from the meeting date. A copy of this notice shall be provided to one or more officers of the city-recognized neighborhood association, business association, Neighborhood Coalition office or its equivalent, a representative of the pole owner, and the City.
- B. Verizon Wireless shall participate in or conduct a meeting in coordination with the city-recognized neighborhood association and business association where the Structure or Replacement Structure is located. The meeting shall occur at least 30 days before Verizon Wireless submits its application to the City to place Facilities on a Structure or Replacement Structure. If no neighborhood association or business association meeting can be arranged the carrier shall arrange a separate meeting at reasonably convenient date, time and location for the recipients of the notice.
- C. At the meeting, Verizon Wireless shall provide a photograph of the pole as it currently exists, and a photo simulation of what it will look like after the proposed changes. The photo simulation must be from the same perspective (distance, height, and angle) as the original photograph.
4. Carrier shall not locate any Facilities, such as cabinets, at grade within the Streets, but may connect its Facilities in the Streets to Facilities located on property adjacent to the Streets in accordance with applicable City codes and with the permission of the adjacent property owner.
  5. Carrier may make excavations in the City Streets for any Facility needed for the maintenance or extension of its Mobile Telecommunications System, subject to obtaining permits from the City. Prior to doing such work, carrier must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees, or permittees of the City, or bureaus of the City, or other units of government owning or maintaining facilities that may be affected by the proposed excavation.
  6. In the event that emergency repairs are necessary for carrier's underground Facilities in the Streets, carrier shall immediately notify the City of the need for such repairs. Carrier may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Carrier must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
  7. Locates. Carrier shall comply with the requirements of the Oregon Utility Notification Law, codified at ORS 757.542 to 757.562 and 757.993 (2007), and the rules and regulations promulgated thereunder.

