



City of Grand Forks  
Staff Report  
Committee of the Whole – April 27, 2020  
City Council – May 4, 2020

**APPROVED & ACCEPTED**  
by City Council

05/04/2020

*Maureen Storstad*  
Maureen Storstad  
City Auditor

**Agenda Item:** Agreement for Placement of Wireless Facilities in Public Right-of-Way with Verizon

**Submitted by:** Engineering Department, David Kuharenko, PE (Assistant City Engineer)

**Staff Recommended Action:** **Approve the Draft Agreement with Verizon Subject to Review by the City Attorney for Placement of Wireless Facilities in Public Right-of-Way**

**Committee Recommended Action:** Refer to City Council with the recommendation to approve.

**Council Action:** Moved by Weigel, seconded by Weber to approve the staff recommendation. Motion carried unanimously.

## **BACKGROUND:**

In September of 2018, the Federal Communications Commission (FCC) adopted an order in its ongoing proceedings to streamline the rollout of infrastructure for broadband services. This order was effective on January 14, 2019. This included small cells for 4G and 5G services. The proposed agreement provides the framework for cell phone carriers to attach small cell equipment to our existing infrastructure.

This concept was previously discussed as an informational item at the February 10, 2020 Committee of the Whole meeting. The draft ordinance was presented at the April 13, 2020 Committee of the Whole meeting.

## **ANALYSIS AND FINDINGS OF FACT:**

- Verizon staff has contacted the City regarding small cell applications and has provided their input on the proposed agreement to city staff.
- It is currently uncertain how much staff time will be required to administer the small cell program.
- It is anticipated that current staff will administer the small cell program and will evaluate staffing needs as the program develops.

## **SUPPORT MATERIALS:**

- Draft Agreement with Verizon

**AGREEMENT FOR PLACEMENT OF WIRELESS  
COMMUNICATION FACILITIES IN PUBLIC RIGHT-OF-WAY**

THIS AGREEMENT is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) and is entered into by and between the **City of Grand Forks**, a North Dakota municipal corporation (the “City”) and **Cellco Partnership d/b/a Verizon Wireless** (the “Grantee”).

RECITALS

WHEREAS, Grantee owns, maintains, operates and controls, a telecommunication network or networks serving wireless customers and utilizing Wireless Communication Facilities and accessory Equipment.

WHEREAS, the City owns, operates and maintains municipal facilities in the Public Right-of-Way.

WHEREAS, for purposes of operating the network, Grantee wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Right-of-Way on municipal facilities.

WHEREAS, the City currently prohibits the placement of Equipment in the Public Right-of-Way except under agreement with the City.

NOW, THEREFORE, the parties hereby agree as follows:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms and conditions:

1. **DEFINITIONS.** The following definitions shall apply to the provisions of this Agreement:

1.1 ***Camouflaged Wireless Facility or Pole*** means any wireless facility or pole that is covered, blended, painted, disguised, camouflaged or otherwise concealed such that the wireless facility or pole blends into the surrounding environment and is visually unobtrusive. Such terms include, but are not limited to, a wireless facility or pole hidden beneath the facade, blended with surrounding area design, painted to match the supporting area, or disguised with artificial tree branches or other design features.

1.2 ***City*** means the City of Grand Forks, North Dakota, including all of its departments, officials, officers and employees.

1.3 ***Decorative Streetlight Pole*** means any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

1.4 ***Equipment*** means accessory equipment serving or being used in conjunction with an antenna or Wireless Communication Facility. Equipment includes, but is not

limited to, utility or transmission equipment, power supplies, generators, batteries, cables and conduit, equipment buildings, cabinets, storage sheds, shelters, and vaults.

- 1.5 **Facilities** means a Wireless Communication Facility and/or wireless support structure.
- 1.6 **Fee** means any application, assessment, license, charge, fee or imposition for entities doing business in the City lawfully imposed by the City's governing body, but excluding any utility users' tax, franchise fees, communications tax, or similar tax, special assessment or levy.
- 1.7 **Installation Date** means the date that the Grantee installs the first equipment pursuant to this Agreement.
- 1.8 **Laws** means any and all applicable federal and state statutes and rules and applicable local ordinances, resolutions, regulations, administrative orders, judicial decisions, or other requirements of any state or federal agency having joint or several jurisdiction over the parties to or subject matter of this agreement.
- 1.9 **Municipal Facilities** means City-owned streetlight poles, decorative streetlight poles, lighting fixtures, sign posts or other City-owned structures, excluding traffic signals and traffic signal poles, located within the Public Right-of-Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.
- 1.10 **Network** means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by Grantee to serve its wireless carrier customers in the City.
- 1.11 **Public Right-of-Way** means the area on, below, or above a public roadway, highway, street, alley, boulevard, berm, sidewalk, bicycle lane, or other area in which the city has an interest, including other dedicated rights-of-way, for travel purposes and/or utility easements. The term shall not include the airwaves above the right-of-way with regard to cellular or other non-wire telecommunications or broadcast services. The term shall further not include any property owned by any private person or entity nor shall it include any Public Right-of-Way under the control of any governmental entity other than the city of Grand Forks.
- 1.12 **Services** means the RF transport and other telecommunications services provided through the network by Grantee to its wireless carrier customers.
- 1.13 **Streetlight Pole** means any standard-design concrete, fiberglass or metal pole used for street lighting purposes.
- 1.14 **Traffic Signal Pole** means any standard-design concrete, fiberglass, metal, or wooden pole used to support vehicular or pedestrian traffic signals.

- 1.15 ***Wireless Communication Facility*** means any fixed tangible asset usable for the purpose of providing wireless transmission of voice, data, images or other signals or information including, but not limited to, telecommunications, cellular telephone service, personal communications service and paging service. A Wireless Communications Facility includes antennas and accessory equipment. A Wireless Communications Facility does not include an underlying wireless support structure.
- 1.16 ***Wireless Services*** means only “personal wireless services” as that term is defined in 47 U.S.C. Section 322(c)(7)(C), now or hereafter in effect, including commercial mobile services as defined in 47 U.S.C. Section 332(d), now or hereafter in effect, provided to personal mobile communication devices through or by a Wireless Communication Facility located wholly or partially in the right-of-way.
- 1.17 ***Wireless Support Structure*** means any fixed, above-grade and below-grade structure in the public right-of-way used to house or support Wireless Communications Facilities and equipment.

2. **TERM.** This Agreement shall be effective as of the date of execution by both parties (the Effective Date) and shall extend for an initial term of ten (10) years commencing on the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Agreement and any permit shall be automatically extended for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless either party notifies the other party of its intention not to renew not less than sixty (60) calendar days prior to commencement of the relevant renewal period. The initial term and all extensions shall be collectively referred to herein as the “Term.”

3. **SCOPE OF AGREEMENT.**

- 3.1 ***Grantee’s Sole Cost and Expense.*** Any and all rights expressly granted to Grantee under this Agreement, which may be exercised at Grantee's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable laws to use any and all parts of the Public Right-of-Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to reasonable prior review and approval of the City except that it is agreed that no zoning or planning commission permit, variance, conditional use permit, or other site plan permit, or their equivalent under the City's ordinances, codes or laws, shall be required for the installation of Grantee's Wireless Communications Facility installed on authorized Municipal Facilities.
- 3.2 ***Attachment to Municipal Facilities.*** For installing Wireless Communication Facilities on Municipal Facilities, the proposed locations of the Wireless

Communication Facilities on Municipal Facilities shall be approved by City in its sole, reasonable discretion within sixty (60) days of receiving a complete Application from Grantee, subject to the requirements, limitations or applicable laws. After the initial approval of the Application, any further installation on Municipal Facilities shall first be authorized by the City Engineer, but without further need for legislative action. Each Application must include drawings and diagrams depicting the location(s) and proposed manner of installation, including all technical data reasonably required by the City Engineer, and stamped by a professional engineer licensed to practice in the State of North Dakota. The City may refuse to allow attachment of Wireless Communication Facilities to Municipal Facilities if the Application is incomplete or where there is insufficient capacity, or for reasons related to safety, reliability, interference with existing facilities, or generally applicable engineering standards. If Grantee's application is denied, the City will send Grantee a denial, in writing, stating the particular reason for denial. In no event shall City be obligated to replace any Municipal Facilities to accommodate any Wireless Communication Facilities. If the application demonstrates that the subject Municipal Facility must be replaced in order to accommodate Grantee's proposed attachment, Grantee must replace at its sole cost and expense the Municipal Facility. Grantee may maintain, repair, replace and make like kind modifications to any Wireless Communication Facility that do not materially change the size, height and weight of the Wireless Communication Facility.

- 3.3 ***Stock Poles.*** Grantee shall provide stock poles to be used when damage occurs to existing Municipal Facilities to which Grantee has installed Equipment. One stock pole of each type shall be provided with an additional pole for every five installed, to a maximum of four poles of each type to be held in inventory. The required inventory must be maintained by the applicant. All poles placed in the inventory by the permit holder shall become the property of the City.
- 3.4 ***No Interference.*** Grantee in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any way with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, storm sewers, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other telecommunications, utility, municipal facilities, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable laws or this Agreement.
- 3.5 ***Compliance with Laws.*** Grantee and the City shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Agreement.
- 3.6 ***Nonexclusive Grant of Authority.*** This Agreement is not exclusive and the City reserves the right to grant permission to use its right-of-way for the same or similar purposes to other parties and for such other uses as may be permitted by law or authorization by the City.

- 3.7 ***No Additional Grant of Authority.*** This Agreement does not grant the Grantee the authority to grant any rights under this Agreement to any other party without the written consent of the City. This Agreement only authorizes permission to use the Public Right-of-Way and does not confer any right or permission to install Wireless Communications Facilities on a street light pole not approved by the City nor does it confer any rights or permission to install Wireless Communications Facilities on traffic signals or other locations within the Public Right-of-Way without having first obtained permission from the City. Any co-location of Wireless Communication Facilities on utility poles not owned by the City must be authorized in writing and a copy presented to the City Engineer prior to any installation.
- 3.8 ***No Property Interest Granted.*** This Agreement does not grant to the Grantee any interest in any property.
- 3.9 ***Limited Installation.*** Grantee shall install its Wireless Communication Facilities only in the City approved locations. Grantee shall not install any Wireless Communication Facilities on public property without the written authorization of the property owner.
- 3.10 ***No Authority for Other Equipment.*** This Agreement does not authorize the Grantee to install equipment facilities associated with or for macrowireless towers in the Right-of-Way.
- 3.11 ***No Guyed Wires.*** This Agreement does not authorize the Grantee to install any guyed wires for facilities associated with the installation of Wireless Communication Facilities.
- 3.12 ***No City Responsibility.*** Except as otherwise agreed by the parties, the City shall not be responsible for any installation, maintenance or provision of any equipment, services, facilities, Wireless Communication Facilities, wireless support structure or any electrical services necessary for any Wireless Communication Facility.

#### 4. **APPLICATION/PERMITS.**

- 4.1 ***Application.*** Prior to installation or modification of a Wireless Communication Facility, Grantee shall complete and submit to the City Engineer a complete application as prescribed by the City Engineer. The complete application shall include, but not be limited to, the following items:
- Documents necessary for the review or requested by the City Engineer.
  - Scaled maps showing intended location of Wireless Communication Facilities.
  - Represented drawings or pictures of the intended Wireless Communication Facilities.
  - PE stamped engineering and construction plans and drawings.
  - Written confirmation of the agreement between carrier and grantee for carrier

to use grantee's Wireless Communication Facilities, if applicable.

- CAD drawing showing location of materials of all planned installations, including existing utilities.
- Construction specifications and product specifications for all planned installations.
- A complete description of source of power supply and power distribution.
- Diagrams and shop drawings of proposed Wireless Communication Facilities.
- A complete and detailed inventory of all equipment and personal property to be placed within the Public Right-of-Way.
- Documentation provided in compliance with guidelines, design standards, applications and other reasonable content required by the City Engineer.
- GIS location data.
- Engineering and construction plans and drawings stamped by a professional engineer authorized to practice in the State of North Dakota.
- Structural calculation stamped by a professional engineer authorized to practice in the State of North Dakota.

4.2 ***Permits.*** Grantee shall apply for the appropriate permits and pay all fees and charges for any attachment, installation, operation, maintenance or location of the Wireless Communication Facilities in the Public Right-of-Way. The City agrees to use reasonable efforts to review and approve Grantee's applications, if complete, within sixty (60) days of submission.

4.3 ***Review Criteria.*** The City Engineer shall review the application to determine availability, compliance with this Agreement, public safety impact, impact upon existing and/or future utilities, potential impediments to pedestrian or vehicular traffic, potential visibility impairments, and other applicable considerations related to the requested location and facilities. The City Engineer shall provide written notice of the approval or denial of the application for location review and reasons for denial, if applicable, within sixty (60) days of receipt of the complete and accurate application.

4.4 ***Review Period.*** The City shall complete its review of all complete applications within the time period provided by law, subject to any tolling of the time period as may be provided by law or as otherwise agreed upon by the parties.

## 5. **FEES AND CHARGES.**

5.1 ***Payment of Fees and Charges.*** Grantee shall be solely responsible for the payment of any and all lawful fees in connection with Grantee's performance under this Agreement, including those set forth herein.

- 5.2 ***Application Fee.*** In order to compensate the City for review of Grantee's application for placement of Wireless Communication Facilities within the Public Right-of-Way, Grantee shall pay to the City an application fee in the amount of \$500.00 for up to five small wireless facilities and \$100.00 for each additional facility. Such fee shall be paid along with or prior to the submission of any application for review by the City Engineer.
- 5.3 ***Annual Fee.*** In order to compensate the City for Grantee's entry upon and deployment within the Public Right-of-Way and as compensation for the use of Municipal Facilities, Grantee shall pay to the City an annual fee (the "Annual Fee") in the amount of One Hundred Seventy-five Dollars (\$175.00) for the use of each Municipal Facility, if any, upon which Equipment has been installed pursuant to this Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than February 15 of each year.
- 5.4 ***Accounting Matters.*** Grantee shall keep proper and accurate books of account at its administrative office, and in electronic format, for the purpose of determining the amounts due to the City under this section. The City may inspect Grantee's books of account relative to the City, or request electronic copies, at any time during regular business hours on thirty (30) days' prior written notice. The City may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payment due under this section. The City agrees that such information is proprietary information and shall not be considered public information pursuant to N.D.C.C. Chapter 44-04.
- 5.5 ***Electricity Charges.*** Grantee shall be solely responsible for the payment of all electrical utility charges to the applicable utility provider based upon the Equipment usage of electricity and applicable tariffs.
6. **CONSTRUCTION REQUIREMENTS.**
- 6.1 ***Compliance with Ordinance.*** Except as otherwise provided by law, Grantee shall specifically comply with any ordinances adopted by the City of Grand Forks relating to Wireless Communication Facilities, wireless support structures, and/or Public Right-of-Ways.
- 6.2 ***Compliance with Requirements.*** Grantee shall comply with all applicable federal, State, and City codes, specifications and requirements, if any, related to the construction, installation, operation, maintenance, and control of Grantee's Wireless Communication Facilities installed in the Public Right-of-Way and on Municipal Facilities in the City. Grantee shall not attach, install, maintain, or operate any

Wireless Communication Facilities in or on the Public Right-of-Way on Municipal Facilities without the prior approval of the City for each location.

- 6.3 ***Weight Limitations.*** The weight of a small cell pole, including all attached Wireless Communication Facilities, shall not exceed the total weight as recommended by either the pole manufacturer or manufacturer of any breakaway device utilized.
- 6.4 ***Construction Timing.*** Upon issuance of all requisite permits, Grantee shall use commercially reasonable efforts to commence and complete such permitted Wireless Communication Facilities installation in a timely manner, and in no event shall such Equipment installation take longer than ninety (90) days from construction commencement. Notwithstanding the foregoing, there shall be excluded from the computation of such 90-day time period delays due to: (1) the wrongful or negligent acts or omissions of the City, its agents, employees, or contractors, (2) delays caused by third party communication carriers and other third party providers of Equipment and services, and (3) fires or other casualty, inclement or adverse weather of unusual amount or duration for the subject season, strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes whatsoever beyond the control of Grantee. Grantee shall employ reasonable diligence to eliminate the cause of any inability or delay referred to in this Section . One or more extensions of time for periods of not more than 60 days each may be allowed by the City provided that the extension is requested in writing, justifiable cause is demonstrated, and the construction site is not unreasonably unsightly or unsafe.
- 6.5 ***Location of Wireless Communication Facilities.*** The proposed locations of Grantee's planned initial installation of Wireless Communication Facilities shall be provided to the City prior to deployment of the Wireless Communication Facilities. Upon the completion of installation, Grantee promptly shall furnish to the City a pole list showing the exact location of the Wireless Communication Facilities in the Public Right-of-Way and the date of initial installation. Additional installations during the term of this Agreement shall be approved and installed in accordance with this Agreement and said "pole" list updated upon each installation.
- 6.6 ***Relocation and Displacement of Wireless Communication Facilities.*** Grantee understands and acknowledges that the City may require Grantee to relocate one or more of its Wireless Communication Facilities installations. Grantee shall at the City's direction relocate such Wireless Communication Facilities at Grantee's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Wireless Communication Facilities is interfering with or adversely affecting proper operation of any City-owned light poles, traffic signals, or other municipal facilities

or city equipment in the Public Right-of-Way; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford Grantee a reasonably equivalent alternate location. If Grantee shall fail to relocate any Wireless Communication Facilities as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Wireless Communication Facilities at Grantee's sole cost and expense, without further notice to Grantee. To the extent the City has actual knowledge thereof the City will attempt promptly to inform Grantee of the displacement or removal of any pole on which any Wireless Communication Facilities is located.

- 6.7 ***Relocations at Grantee's Request.*** In the event Grantee desires to relocate any Wireless Communication Facilities from one Municipal Facility to another, Grantee shall submit all information required under Section 4.1 prior to any relocation. The City Engineer may, in the exercise of the City Engineer's discretion, require reapplication. The City will use its best efforts to accommodate Grantee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.
- 6.8 ***Damage to Public Right-of-Way.*** Whenever the removal or relocation of Wireless Communication Facilities is required or permitted under this Agreement, and such removal or relocation shall cause the Public Right-of-Way or Municipal Facilities to be damaged, Grantee, at its sole cost and expense, shall promptly repair and return the Public Right-of-Way and Municipal Facilities in and on which the Wireless Communication Facilities are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Grantee does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to Grantee, to perform or cause to be performed such reasonable and necessary work on behalf of Grantee and to charge Grantee for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for payment by the City, Grantee shall promptly reimburse the City for such costs.
- 6.9 ***Return to Prior Condition.*** Grantee shall repair any damage to the Public Right-of-Way resulting from Grantee's activities occurring within the right-of-way at Grantee's sole cost and expense, including restoration of the right-of-way and such property to a substantially similar condition as it was immediately before the Grantee was granted a permit. Such restoration shall occur within ten (10) days following the date of any removal or relocation of a Wireless Communication Facility. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the City Engineer. If Grantee does not undertake the necessary repairs, the City, in its sole option, upon fifteen (15) days' prior written notice to Grantee, may perform or cause to be performed such reasonable and necessary work on behalf of

Grantee in making such repairs and to charge the Grantee for the costs incurred. Upon receipt of the demand for payment by the City, Grantee shall reimburse the City for such costs within thirty (30) days.

6.10 ***Additional Requirements – Wireless Communication Facilities.***

- (a) The City may require Wireless Communication Facilities to be concealed or enclosed as much as possible, including camouflaged Wireless Communication Facilities or stealth facilities so that such Wireless Communication Facilities or equipment are not visible or visually minimized to the extent possible.
- (b) All Wireless Communication Facilities, including all wires and cables leading thereto, shall be installed in conduit.
- (c) All Wireless Communication Facility wires and cables shall be installed through directional drilling or boring. Open trenching shall not be allowed unless requested of and approved by the City Engineer in writing.

6.11 ***Installation.*** Grantee shall, at its own cost and expense, install the Wireless Communication Facilities in a good and workmanlike manner and in accordance with the requirements promulgated by the City Engineer. All work done in connection with the installation, operation, maintenance, repair, modification and/or replacement of the Wireless Communication Facilities shall be in compliance with all applicable laws, ordinances, codes, rules and regulations of the city, state and the United States.

6.12 ***Inspections.*** The City Engineer may perform inspections of any Wireless Communication Facility located in the right-of-way as the City Engineer deems appropriate without notice.

6.13 ***Emergency Situations.*** In the event of an emergency situation, the City may, but is not required to, notify Grantee of an inspection or of an emergency situation. The City may take action necessary to remediate the emergency situation and the City Engineer shall notify the Grantee no later than 24 hours after remediation is complete. This provision shall not, however, require the City to replace any Wireless Communication Facility or pole.

6.14 ***No Installations on Traffic Signals.*** Grantee shall not allow or place any Wireless Communication Facilities on a traffic control device or traffic signal or any structure supporting a traffic control device or traffic signal.

6.15 ***No Installations on Bridges, Overpasses or Underpasses.*** Grantee shall not allow nor install Wireless Communication Facilities on any part of any City bridge,

overpass, underpass, or tunnel, unless approved by the City Engineer in writing.

- 6.16 **No Generators.** Grantee shall not be allowed to install generators or backup generators in the Right-of-Way.
- 6.17 **Power Services.** Grantee shall be responsible for obtaining any electrical power service to the Wireless Communication Facilities. The City shall not be liable to the Grantee for any stoppages or shortages of electrical power furnished to the Wireless Communication Facilities, including without limitation, stoppages or shortages caused by any act, omission or requirement of the City.
- 6.18 **As-Built Drawings.** Grantee shall provide the City of Grand Forks, without charge, a full set of as-built drawings for all Wireless Communication Facilities installed within Public Right-of-Way. Such as-built drawings must be provided within 160 days from date of installation.
- 6.19 **Maintenance.** Grantee shall maintain all equipment, facilities and installations in good and orderly repair and condition. Any facilities, equipment or installation no longer necessary for use or not maintained in good and orderly condition shall be removed at the cost of the Grantee.
- 6.20 **Identification Plate/No Advertising.** Grantee shall permanently affix a plate with the carrier's name, location identifying information, and emergency telephone number. Such plate shall not exceed 4" x 6". No advertising shall be allowed on any Wireless Communication Facility.

7. **CONDITIONS OF RIGHT-OF-WAY OCCUPANCY.**

- 7.1 **Minimal Interference with Public Infrastructure.** All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be located so as to avoid interference with the proper use of streets, alleys and other public ways and places, and to avoid interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.
- 7.2 **Restoration of Disturbed Areas.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or trees or green areas, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, or City Forester, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, or trees or green areas, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for the duration of this Agreement and two (2) years after its expiration.

- 7.3 ***Relocation.*** At any time during the term of this Agreement, the City may lawfully elect to alter or change the grade of any street, alley or public way. Upon reasonable notice by the City, Grantee shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other Grantee fixtures at its own expense. In the event it shall become necessary for the City to perform street, water, sanitary sewer or storm sewer maintenance or construction at the location of the poles, wires, cables, underground conduits, manholes and other Grantee fixtures of the Grantee, Grantee shall promptly temporarily relocate its installation at its sole expense upon notice from the City to relocate.
- 7.4 ***Placement of Wireless Communication Facilities.*** Grantee shall not place any Wireless Communication Facilities or other equipment that will materially interfere with any other utility installation without the owner's written consent or obstruct the usual travel on streets, alleys and public ways. The City shall not permit the placement of other utilities or installations that will interfere with Grantee's facilities or services provided from such location by Grantee.
- 7.5 ***Temporary Removal of Wireless Communication Facilities for Building Moving.*** The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise, lower or move any of its Wireless Communication Facilities to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the Grantee shall have the authority to require payment in advance. The Grantee shall be given at least forty-eight (48) hours notice to arrange for temporary wire changes.
8. **TERMINATION.**
- 8.1 This Agreement may be terminated by either party upon sixty (60) days' prior written notice to the other party following a default of any material covenant or term hereof by the other party, which default is not cured, or if the defaulting party fails to commence such cure within the period stated in Section 9 or fails thereafter diligently to prosecute such cure to completion, provided that the grace period for any monetary default shall be thirty (30) days from receipt of notice. Except as expressly provided herein, the rights granted under this Agreement are irrevocable during the term.
- 8.2 If Grantee defaults under this Agreement, the City may terminate this Agreement subject to Grantee's ability to cure such defaults below. The City's right to terminate this Agreement for Grantee's default is cumulative of all its rights and remedies which exist now or in the future. Default by Grantee includes, but is not limited to, failure of the Grantee to comply with any material term of this Agreement; Grantee becoming insolvent; Grantee's failure to obtain license, permits and certifications required by the City under this Agreement; Grantee's failure to pay all fees associated

with this Agreement; any assignment of all or a substantial part of Grantee's assets for the benefit of its creditors; a receiver or trustee is appointed for Grantee; or if Grantee fails to install any Wireless Communication Facilities in the Public Right-of-Way within one (1) year of the effective date.

- 8.3 If a default occurs, the City Engineer shall deliver written notice to Grantee describing the default and the proposed termination date. The Grantee shall have sixty (60) days from the date of receipt of such notice to cure the defect. If Grantee cures the default before the proposed termination date, the proposed termination is ineffective.
- 8.4 If the default is not cured in a timely manner as set out above, then the City Engineer may immediately terminate this Agreement by notifying Grantee in writing of such termination. After receiving notice, Grantee shall, immediately cease operations and remove Wireless Communication Facilities from the right-of-way in accordance with the provisions of this Agreement.
- 8.5 The Grantee may terminate this Agreement or any one located Wireless Communication Facility at any time by giving thirty (30) days' advance written notice to the City Engineer.
- 8.6 If the Grantee does not remove all Wireless Communication Facilities from the right-of-way within the time period required by this Agreement, the Wireless Communication Facility shall be deemed to be in a hold-over period subject to the payment obligations set forth herein.
- 8.7 If Grantee's Wireless Communication Facilities continue to occupy the right-of-way after termination or expiration of this Agreement, as may be extended, such occupancy shall not be deemed to be a renewal or extension of this Agreement, but shall be a month-to-month use of the right-of-way provided Grantee pays the fees and other payments required by the City and continues to comply with all terms of this Agreement.

9. **ABANDONMENT RELOCATION AND REMOVAL.**

9.1 ***Abandonment and Removal of Obsolete Wireless Communication Facilities.***

- (a) Grantee shall remove Wireless Communication Facilities when such facilities are abandoned regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to protect public health, safety and welfare, the removal must be completed within the earlier of ninety (90) days of the Wireless Communication Facility being abandoned, or within ninety (90) days of receipt of written notice from

the City.

- (b) Grantee shall remove Wireless Communication Facilities when such facilities are no longer needed or being used or have reached equipment end of life. Such removal shall be at the cost of Grantee.

## 9.2 ***Removal Required by City.***

- (a) Except in an emergency, Grantee shall, at its sole cost and expense, promptly disconnect, remove or relocate the applicable Wireless Communication Facility within the time frame and in the manner required by the City Engineer if the City Engineer reasonably determines that the disconnection, removal or relocation of any part of a Wireless Communication Facility (a) is necessary to protect the public health, safety, welfare or City property; (b) the Wireless Communication Facility, or a portion thereof, is adversely affecting proper operation of street lights or other City property; or (c) Grantee fails to obtain all applicable licenses, permits and certifications required by law for its Wireless Communication Facility. If the City Engineer reasonably determines that there is imminent danger to the public, then the City may immediately disconnect, remove or relocate the applicable Wireless Communication Facility at the Grantee's sole cost and expense.
- (b) Except in an emergency, the City Engineer shall provide ninety (90) days' written notice to the Grantee before removing a Wireless Communication Facility unless there is imminent danger to the public health, safety and/or welfare. In the event of imminent danger to the public health, safety and/or welfare, Grantee shall remove such Wireless Communication Facility within a reasonable time established by the City Engineer.
- (c) Grantee shall reimburse the City for the City's actual costs of removal of its Wireless Communication Facilities in accordance with this Agreement within thirty (30) days of receiving an invoice from the City.

## 9.3 ***Removal Required for Emergency Conditions.*** The City, in response to emergency conditions, may, at any time and without prior authorization or notice, enter the right-of-way and undertake repairs, removal or adjustments of all Wireless Communication Facilities located within the right-of-way area governed by this Agreement. As used herein, the term "emergency condition" shall mean a condition or situation that is imminently likely to endanger life or property or that is imminently likely to cause a material adverse effect on the security of, or damage to public or private property. The City will notify Grantee within twenty-four (24) hours of any emergency repairs, removals or adjustments undertaken in conjunction with this section. Grantee shall provide the City a list of emergency contacts. The Grantee shall be responsible for

the cost and implementation of all actions needed to stabilize and/or restore Wireless Communication Facilities following the emergency activities undertaken by the City.

9.4 ***Removal or Relocation Required for City Project.***

- (a) Grantee understands and acknowledges that the City may require Grantee to remove or relocate its Wireless Communication Facility, or any portion thereof from the right-of-way, and Grantee shall, at the City Engineer's sole discretion, remove or relocate the same at Grantee's sole cost and expense, whenever the City Engineer reasonably determines that the relocation or removal is needed for construction, completion, repair, widening, relocation or maintenance of, or use, in connection with, any City construction or maintenance project.
- (b) If Grantee fails to remove or relocate the Wireless Communication Facility or a portion thereof as requested by the City Engineer within ninety (90) days of Grantee's receipt of the request, then the City shall be entitled to remove the Wireless Communication Facility or a portion thereof at Grantee's sole request.

9.5 ***Removal Required After Termination or Expiration of Permit.*** Within sixty (60) days after termination or expiration of this Agreement, Grantee shall remove all Wireless Communication Facilities from the right-of-way and peaceably surrender the premises to the City in the same condition the right-of-way was in on the date the permit was granted for the licensed location, excepting ordinary wear and tear. Removal of all of the Grantee's Wireless Communication Facilities under this section must be completed within ninety (90) days. If Grantee fails to begin removal of the Wireless Communication Facilities on or before the sixtieth (60<sup>th</sup>) day after the Agreement expires or terminates or fails to complete removal within ninety (90) days, the City may remove, store or dispose of any remaining portion of the Wireless Communication Facilities in any manner the City Engineer deems appropriate. Grantee shall, within thirty (30) days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith, including expenses for removal and storage.

9.6 ***Removal Required After Revocation.*** Within sixty (60) days after the date of the notice of revocation of a permit, Grantee shall commence removal of all Wireless Communication Facilities from the right-of-way and peaceably surrender the premises to the City in the same condition the right-of-way was in on the date the permit was granted for the licensed location, excepting ordinary wear and tear. Removal of all of the Grantee's Wireless Communication Facilities under this section must be completed within ninety (90) days. If Grantee fails to begin removal of the Wireless Communication Facilities on or before the sixtieth (60<sup>th</sup>) day after the

Agreement expires or terminates or fails to complete removal within ninety (90) days, the City may remove, store or dispose of any remaining portion of the Wireless Communication Facilities in any manner the City Engineer deems appropriate. Grantee shall, within thirty (30) days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith, including expenses for removal and storage.

9.7 ***Removal or Relocation by Grantee.*** If Grantee removes or relocates a Wireless Communication Facility at its own discretion, it shall notify the City Engineer in writing not less than ten (10) business days prior to removal or relocation.

10. **INDEMNIFICATION AND WAIVER.**

10.1 ***Indemnification.*** Grantee agrees to indemnify, defend, protect, and hold harmless the City, its elected officials, council members, officers, agents and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Grantee's activities undertaken pursuant to this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

10.2 ***Waiver of Claims.*** Grantee waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

10.3 ***Limitation of Liability.***

- (a) The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors. In no event shall either party be liable for indirect or consequential damages.
- (b) The City shall not be liable to Grantee for any damage caused by any other user of the Public Right-of-Way.
- (c) The City shall not be liable to Grantee by reason of inconvenience, annoyance or injury to the Wireless Communication Facility or activities conducted by Grantee therefrom, arising from the necessity of repairing any portion of the Public Right-of-Way or making any necessary alteration or improvements in, or to, any portion of the Public Right-of-Way, or in, or to, City's fixtures,

appurtenances or equipment.

- (d) The City shall not be liable to Grantee, or any of its respective agents, representatives, employees, or customers, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data or interruption or loss of use of service, whether arising under theory of contract, tort, strict liability or otherwise.
- (e) Neither party shall be liable under this Agreement to the other for consequential, special, punitive, or indirect damages, whether under theory of contract, tort, strict liability, or otherwise.

10.4 ***Liability for Grantee's Acts.*** Grantee shall be responsible and liable for the acts and omissions of Grantee's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sublicensees, sublessees, and subcontractors in connection with the performance of this Agreement, as if such acts or omissions were Grantee's acts or omissions.

10.5 ***Survival of Indemnification.*** Grantee's indemnification and obligations under this Agreement will survive for three (3) years after the Agreement expires or terminates.

11. **INSURANCE.** Grantee shall obtain and maintain at all times during the term of this Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Grantee in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, agents and employees as additional insureds as respects any covered liability arising out of Grantee's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled without replacement, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Grantee shall be responsible for notifying the City of such change or cancellation.

11.1 ***Filing of Certificates and Endorsements.*** Prior to the commencement of any work pursuant to this Agreement, Grantee shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; policy expiration date; and specific coverages provided and amounts of such coverages;

- (b) that Grantee's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
- (c) that Grantee's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

11.2 ***Mailing of Certificates.*** The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in section 12 below.

12. **NOTICES.** All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, addressed as follows:

*if to the City:*

CITY OF GRAND FORKS  
Attn: City \_\_\_\_\_  
255 N. 4<sup>th</sup> Street  
Grand Forks, ND 58203

*if to Grantee:*

CELLCO PARTNERSHIP  
d/b/a VERIZON WIRELESS  
Attn: Network Real Estat  
180 Washington Valley Rd.  
Bedminster, NJ 07921

12.1 ***Date of Notices; Changing Notice Address.*** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

13. **ASSIGNMENT.** This Agreement shall not be assigned by Grantee without the express written consent of the City. Notwithstanding the foregoing, the transfer of the rights and obligations of Grantee to a parent, subsidiary, or other affiliate of Grantee or to any successor in

interest or entity acquiring fifty-one percent (51%) or more of Grantee's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that Grantee reasonably demonstrates to the City the following Criteria (collectively the "Exempted Transfer Criteria"): (I) such transferee will have a financial strength after the proposed transfer at least equal to that of Grantee immediately prior to the transfer; (ii) any such transferee assumes all of Grantee's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Grantee's management team, in the provision of telecommunications or similar services, evidences an ability to operate the Network. Grantee shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why Grantee believes the Exempted Transfer Criteria have been satisfied. The City shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that Grantee gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from Grantee any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives Grantee notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City fails to act upon Grantee's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that Grantee has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

14. **WAIVER.** The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

15. **GOVERNING LAW AND JURISDICTION.** This Agreement shall be governed and construed by and in accordance with the laws of the State of North Dakota. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Grand Forks County, North Dakota, or in the United States District Court for the District of North Dakota.

16. **SEVERABILITY.** If anyone or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

17. **ATTORNEYS FEES.** Should any dispute arising out of this Agreement lead to

litigation, the ' prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

18. **NON-EXCLUSIVE GRANT.** Grantee understands that this Agreement does not provide Grantee with exclusive use of the Public Right-of-Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Right-of-Way and on Municipal Facilities so long as they shall not interfere with Grantee's installed facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Right-of-Way and/or on Municipal Facilities.

19. **MISCELLANEOUS PROVISIONS.** The following provisions shall apply generally to the obligations of the parties under this Agreement.

19.1 ***Contacting Grantee.*** Grantee shall be available to the staff employees of any City department having jurisdiction over Grantee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact the Network Monitoring Center Operator at telephone number 800-264-6620 regarding such problems or complaints.

19.2 ***Consent Criteria.*** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

19.3 ***Representations and Warranties.*** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith except as provided herein.

19.4 ***Entire Agreement.*** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

19.5 ***Amendment of Agreement.*** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

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

**CITY OF GRAND FORKS**

By: \_\_\_\_\_  
MICHAEL R. BROWN, Its Mayor

By: \_\_\_\_\_  
MAUREEN STORSTAD, Its Finance Dir.

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

**CELLCO PARTNERSHIP  
D/B/A VERIZON WIRELESS**

By: \_\_\_\_\_, Its \_\_\_\_\_