

**LICENSE AGREEMENT
FOR TEMPORARY PLACEMENT AND OPERATION OF TELECOMMUNICATION
EQUIPMENT ON CITY PROPERTY**

This LICENSE AGREEMENT (License) is made this 17th day of AUGUST, 2018 by and between the CITY OF SANTA FE, a New Mexico municipal corporation (City), and VERIZON WIRELESS (VAW) LLC d/b/a VERIZON WIRELESS, a Delaware corporation (Verizon or Licensee), (collectively, the Parties and each individually a Party).

WHEREAS, on November 21, 2017 the Mayor of the City of Santa Fe issued a Proclamation of Emergency to address insufficient telecommunications capacity in the City; and

WHEREAS, on December 8, 2017 the City entered into a license agreement with Verizon for the temporary placement and operation of telecommunication equipment on certain City-owned properties commencing on December 8, 2017 and ending May 20, 2018 (a period of 164 days), pending review and approval of Verizon's fixed wireless facilities at the same City-owned properties; and

WHEREAS, on May 18, 2018 the City entered into a second license agreement with Verizon for continued temporary placement and operation of telecommunication equipment on certain City-owned properties commencing on May 21, 2018 and ending August 18, 2018 (a period of 90 days), pending review and approval of Verizon's fixed wireless facilities at the same City-owned properties; and

WHEREAS, since December 8, 2017 the review and approval of Verizon's fixed wireless facilities at the City-owned properties has progressed significantly but is not yet complete; and

WHEREAS, Section 14-6.4(A) SFCC 1987 allows temporary structures, uses and operations in connection with and on the site of construction or land development, including the installation of utilities, for a period of up to twelve (12) months.

NOW THEREFORE, Verizon desires an additional ninety (90) days of limited, temporary access, use and occupation of City property to complete the review and approval of Verizon's fixed wireless facilities within the City and the City desires to allow Verizon continued limited, temporary access, use and occupation of certain City property for this purpose pursuant to this License Agreement.

WITNESSETH:

In consideration of Verizon's promises herein, City hereby gives Verizon, a non-exclusive, License, revocable and terminable as hereinafter provided, to enter on, use and occupy the property of the City for the short-term placement and operation of vehicle-mounted or self-standing temporary telecommunication equipment (each set of equipment hereinafter referred to as a TTE), as provided herein.

1. CITY PROPERTY; LICENSED PREMISES.

The City allows Licensee to temporarily access six (6) City-owned properties (each a City Property, specifically: Site #1, Site #3, Site #4, Site #5, Site #6 and Site #7) and to temporarily use and occupy one (1) designated portion of each City Property (each designated portion hereinafter referred to as a Site) as shown on **Exhibit A** attached hereto and made a part hereof, subject to the terms and conditions of this License as specified herein, (together, the six Sites comprise the Licensed Premises).

2. **TERM.**

This License shall commence at 12:00 a.m. on August 19, 2018 (the Commencement Date) and shall continue for a period of ninety (90) days until 11:59 p.m. on November 16, 2018 (the Term) or until otherwise terminated as provided herein.

3. **CONDITIONS OF USE.**

Licensee's access to each City Property and use and occupation of the Licensed Premises shall at all times be in compliance with the provisions of this License including the following conditions of use:

A. Permitted Use. The permitted use of each City Property shall be limited to the access necessary to use, operate, service and repair one (1) TTE at each Site as shown on **Exhibit A** as may be amended from time to time with the prior written approval of the City. No other use of the City Properties or Licensed Premises is allowed without the written consent of the City.

B. Hours of Use and Access. Licensee's use and operation of TTEs at the Licensed Premises is permitted twenty-four (24) hours per day, seven (7) days a week during the Term. Licensee's access to the City Properties for the installation, monitoring, service, repair, and removal of TTEs is subject to the City's security requirements at each City Property as provided by the City to Licensee in writing within two (2) days following the Commencement Date.

C. Electrical Power; Generators. Use of the City's electrical power is included in this License. Electrical generators shall not be used except as back-up power sources.

D. Signage. No exterior signage is allowed on the Licensed Premises except those signs that are attached to and a part of each TTE as may be required by federal or state law.

E. Lighting. No exterior lighting is allowed on the Licensed Premises except those light fixtures that are attached to and a part of each TTE and that are required for the operation and maintenance of each TTE or that are otherwise required to comply with federal or state law.

F. Municipal Code. Licensee's use of the Premises shall at all times be in compliance with the City's Municipal Code, including but not limited to §10-2 SFCC 1987, the City's Noise Ordinance.

Failure of Licensee to comply with conditions of use of the City Properties and License Premises as provided herein shall be deemed a breach of this License and shall constitute grounds for immediate termination of this License by the City.

4. **LICENSE FEE.**

Licensee shall pay the City a fee of **\$21,600.00** [\$700.00 per Site per 30-day period for licensed usage X 6 Sites X 90 days and \$500.00 per Site per 30-day period for electricity X 6 Sites X 90 days], which includes all license fees and payment for electrical power, in full upon the issuance of this License (the License Fee).

5. **TERMINATION.**

The City may, upon ten (10) days written notice, revoke this License and Licensee agrees, in that event, to: (a) peaceably and promptly surrender the Licensed Premises on the termination date specified in the written notice, (b) to remove all TTEs placed on the Licensed Premises by Licensee, and (c) if requested by the City to restore the Licensed Premises to its original state at the time of Licensee's entry thereon. Licensee may terminate this License at

any time upon thirty (30) days written notice to the City. Upon termination of this License by either Party, there shall be no refund of the License Fee or any portion thereof.

6. NO INTEREST CREATED.

Licensee acknowledges that no interest or estate of any kind whatsoever in the Licensed Premises is conveyed by this License or by occupancy or use of the Licensed Premises pursuant to the License. This License shall not be assigned by Licensee.

7. INSURANCE, INDEMNIFICATION & WAIVER OF SUBROGATION

A. Insurance. Licensee, and each of Licensee's contractors and subcontractors who physically access the City's Properties to use the Licensed Premises, shall, at their sole cost and expense, procure and continue to maintain in force during the Term of this License with limits of coverage in the maximum amount in which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property, the following types of insurance:

- (i) Workers' Compensation Insurance (at statutory limits); and
- (ii) Employer's Liability Insurance with minimum limits of One Million Dollars and No Cents (\$1,000,000.00) per occurrence; and
- (iii) Comprehensive General Liability and Property Damage Insurance (including completed operations and contractual liability) on an occurrence basis in an amount not less than Two Million Dollars and No Cents (\$2,000,000.00) combined single limit; and
- (iv) "All-risk" property insurance insuring the Licensed Premises and its appurtenant personal property for full replacement costs.

All policies shall be written by an insurer with an A. M. Best rating of not less than A- (Excellent), Financial Size Category VII, and must be authorized to do business within the State of New Mexico. The general liability insurance coverage shall be endorsed to name the City, the City's agents, employees, volunteers, officers, and elected and appointed officials (collectively the City's Releasees) as additional insureds. Licensee shall provide written documentation of all required insurance coverages upon execution of this License and otherwise within ten (10) days of the City's written request for such documentation. All policies shall provide that the City shall be given no less than thirty (30) days prior written notice of any cancellation except as a result of non-payment, for which not less than ten (10) days prior written notice shall be given.

No self-insurance shall be permitted at any time without the prior written consent of the City, which may be withheld for any or no reason.

B. Indemnification. Licensee agrees to indemnify, defend and hold City's Releasees harmless from and against any claim of injury, loss, damage or liability costs or expenses (including reasonable attorneys' fees and court costs) to the extent arising out of Licensee's breach of this License. Circumstances under which the City will not be held liable include, but are not limited to:

- (i) any work or act done in, on or about the City Properties or the Licensed Premises, or any part thereof at the direction of Licensee, its agents, contractors, subcontractors, servants, employees, licensees or invitees on behalf of Licensee, including but not limited to the installation, use, maintenance, repair or removal of the TTEs, except to the extent such work or act is done or performed by the City or its agents or employees, contractors, volunteers, officers

or officials; and

(ii) any negligence or other willful misconduct on the part of Licensee or any of its agents, contractors, subcontractors, servants, employees, or invitees; and

(iii) any accident, injury or damage caused by or attributable to Licensee or its agents, contractors, subcontractors, servants, employees, or invitees to any person or property occurring at the City Properties or the Licensed Premises or any part thereof, except to the extent caused by the negligence or willful misconduct of the City, its employees, agents, volunteers, officers or officials; and

(iv) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this License on its part to be performed or complied with; and

(v) Any failure of Licensee to comply with applicable local, state or federal laws.

C. Waiver of Subrogation. Licensee hereby grants to the City a waiver of any right to subrogation which any insurer of Licensee may acquire against the City by virtue of the payment of any loss under such insurance except for any workers' compensation claims. Licensee agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

8. NOTICE.

All notices and demands in regards to this License must be given by first class certified or registered mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, courier fee prepaid. All such properly sent notices and demands shall be effective when received, rejected or refused by the recipient. Notices will be addressed to the Parties as follows:

To City:

City Manager
City of Santa Fe
200 Lincoln Avenue
Santa Fe, New Mexico 87501

To Licensee:

Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Either Party may change its notice addresses in this Section upon ten (10) days written notice to the other Party. Any copy of a notice or demand to a Party's legal counsel does not constitute legal notice to that Party.

9. NEW MEXICO TORT CLAIMS ACT.

Any liability incurred by the City in connection with this License is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision of this License modifies or waives any provision of the New Mexico Tort Claims Act.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of this 17th day of AUGUST, 2018.

CITY OF SANTA FE

Renee Martinez for EL
ERIK J. LITZENBERG, CITY MANAGER

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK *all*

APPROVED AS TO FORM:

ERIN K. McSHERRY for *8/14/18*
ERIN K. McSHERRY, CITY ATTORNEY

APPROVED:

Mary McCoy *8/17/18*
MARY T. MCCOY, FINANCE DIRECTOR *all*

BUSINESS UNIT(S)/LINE ITEM(S):

21117.460150 (\$7,200.00)

51300.460350 (\$7,200.00)

51250.460350 (\$3,600.00)

51100.460350 (\$3,600.00)

LICENSEE:

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

CLIF CASEY, EXECUTIVE DIRECTOR

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Clif Casey, Executive Director, Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware corporation.

My Commission Expires: _____
(SEAL)

Notary Public

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of this _____ day of _____, 2018.

CITY OF SANTA FE

ERIK J. LITZENBERG, CITY MANAGER

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

ERIN K. McSHERRY, CITY ATTORNEY

APPROVED:

MARY T. McCOY, FINANCE DIRECTOR

BUSINESS UNIT(S)/LINE ITEM(S):

21117.460150 (\$7,200.00)

51300.460350 (\$7,200.00)

51250.460350 (\$3,600.00)

51100.460350 (\$3,600.00)

LICENSEE:

VERIZON WIRELESS (VAW) LLC

d/b/a VERIZON WIRELESS

CLIF CASEY, EXECUTIVE DIRECTOR

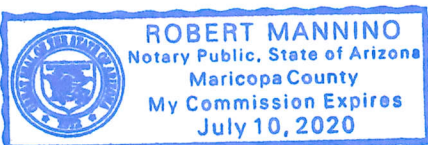
ACKNOWLEDGEMENT

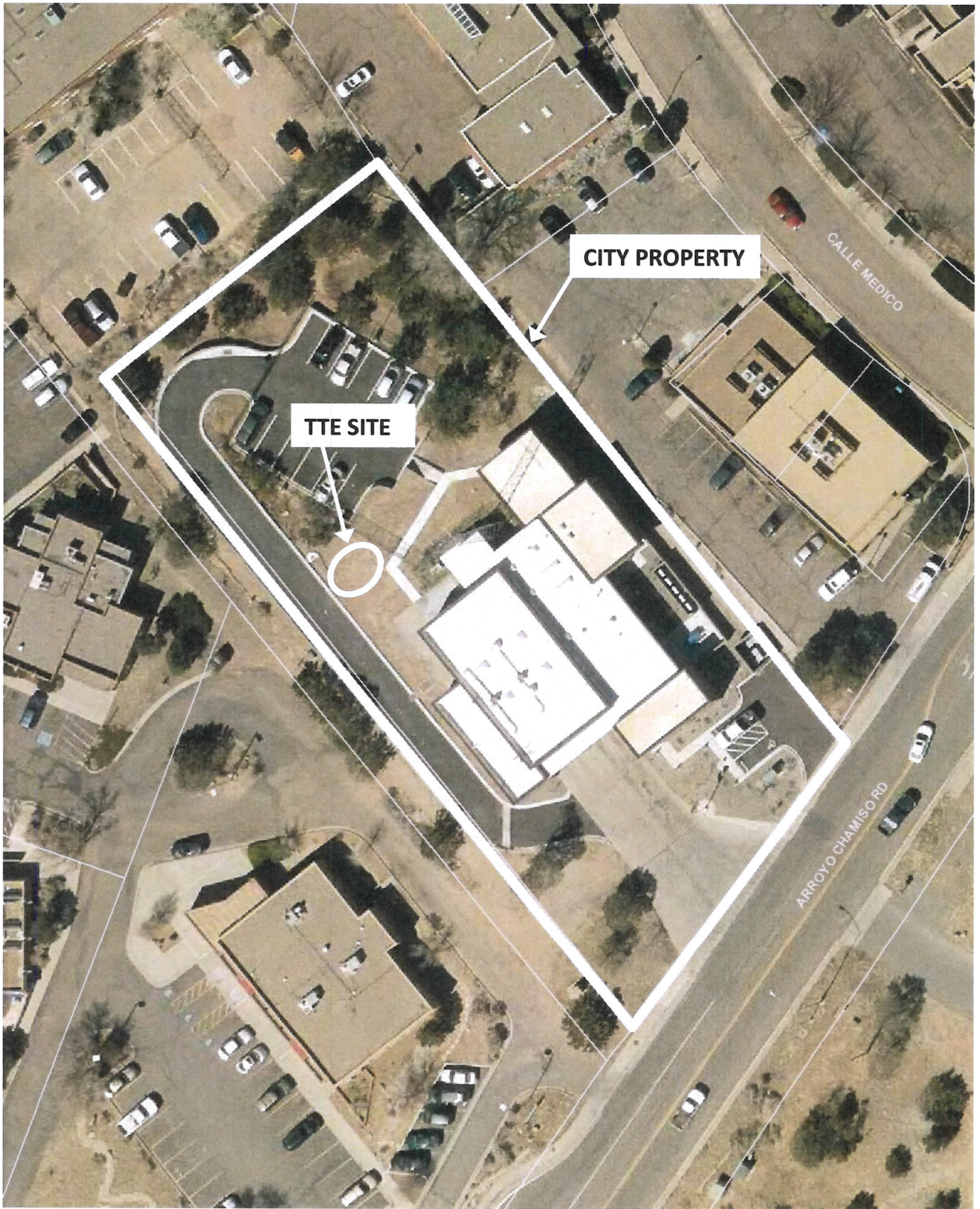
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 16th day of August, 2018 by Clif Casey, Executive Director, Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware corporation.

My Commission Expires: 7/10/20
(SEAL)

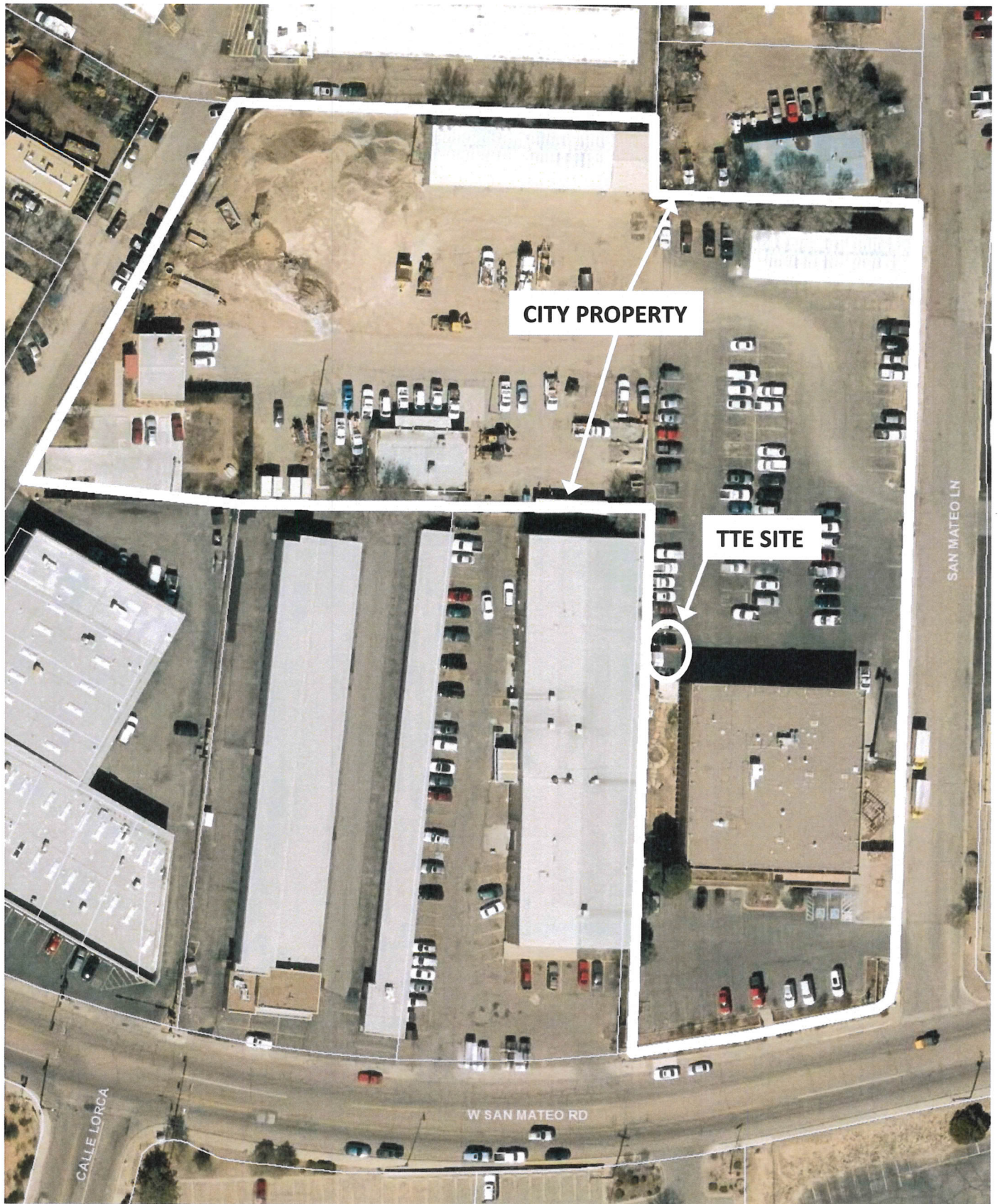
Notary Public





NOTE: TTE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A	SITE #1
FIRE STATION 4 – 1130 ARROYO CHAMISO	



NOTE: TTE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A **SITE #3**
WATER DIVISION – 801 W. SAN MATEO RD.



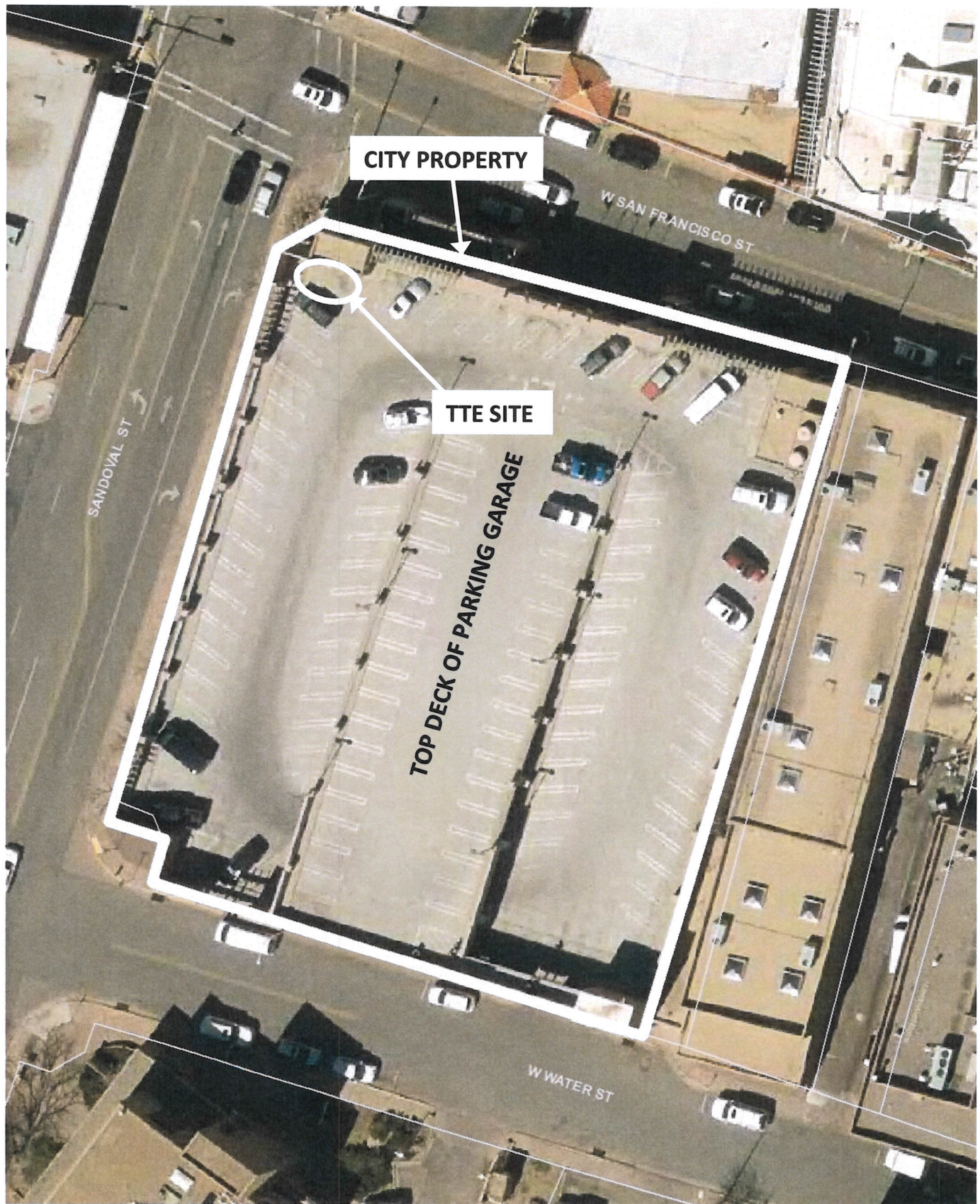
NOTE: TTE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A **SITE #4**
FIRE STATION #1 – MURALES RD.



NOTE: THE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A **SITE #5**
GCCC – 3221 RODEO ROAD

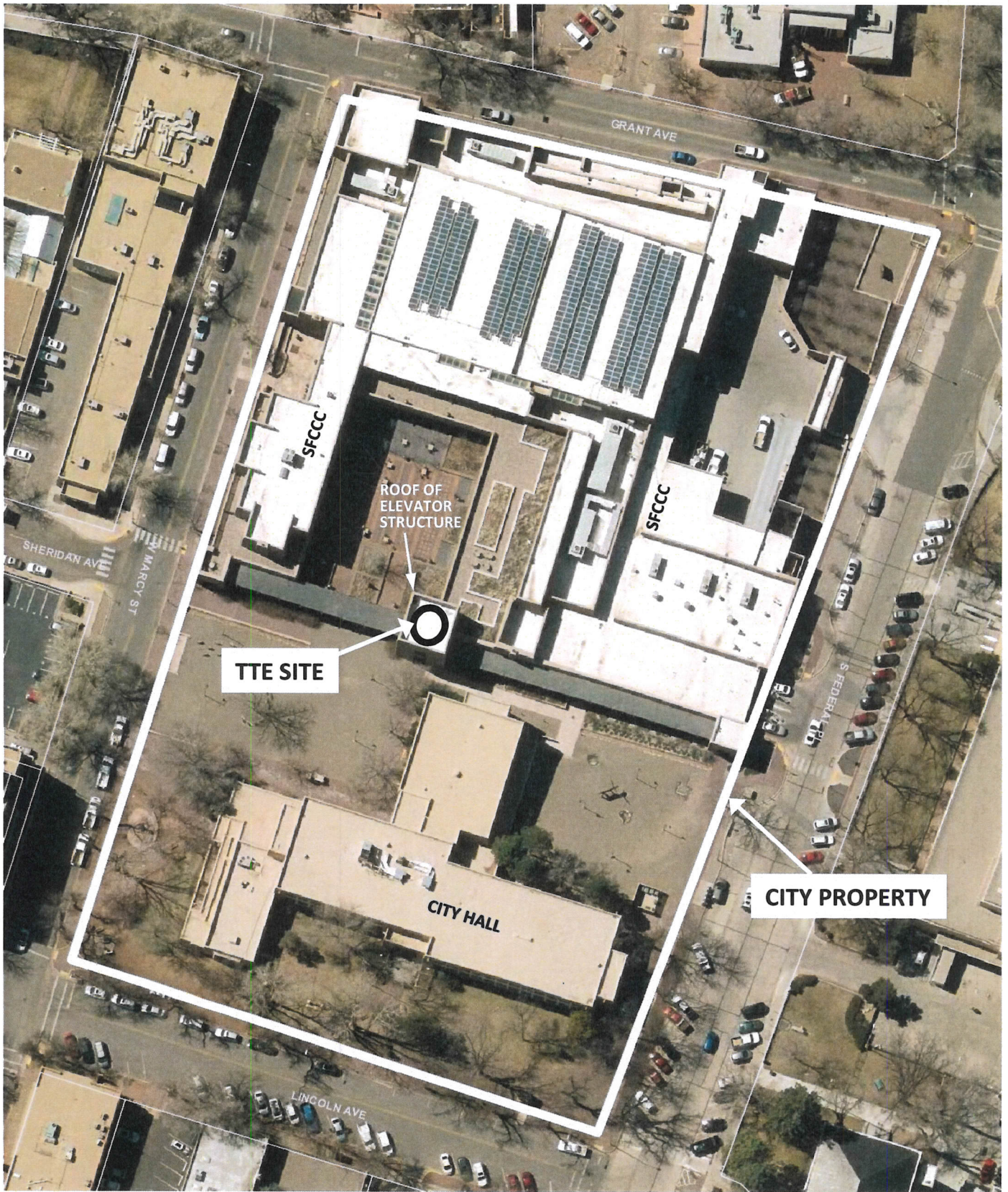


NOTE: TTE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A

SANDOVAL ST. GARAGE – 220 W. SAN FRANCISCO ST.

SITE #6



NOTE: TTE LOCATION SHOWN IS APPROXIMATE. FINAL LOCATION TO BE APPROVED BY CITY.

EXHIBIT A **SITE #7**
SFCCC – 201 W. MARCY ST.