IN BUILDING RADIO DISTRIBUTION AGREEMENT

This Agreement ("<u>Agreement</u>") is made as of the last signature date below ("<u>Effective Date</u>") between the City of Santa Fe whose principal place of business is 201 West Marcy Street, Santa Fe, New Mexico 87501 ("<u>Licensor</u>"), and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, NJ 07920 ("<u>Licensee</u>").

- 1. <u>License</u>. Licensor hereby licenses to Licensee certain spaces on and within Licensor's premises at 201 West Marcy Street, Santa Fe, New Mexico 87501 (the "<u>Premises</u>") for the installation of microcell(s), rerad(s) or other similar or comparable in-building radio-distribution devices ("<u>IBRD</u>") together with cables, fibers or the equivalent connecting such IBRDs, whether through conduit or otherwise. The IBRD and the connecting cables, fibers or equivalent and any other related equipment installed hereunder are the "<u>System</u>". The System components and design principles are described on <u>Exhibit A</u> attached hereto. Any microcells, cable runs or other aspects of the System installed by Licensee shall be for Licensee's exclusive use only. Licensee may replace and augment the IBRDs or portions thereof with similar or comparable equipment and modify any frequencies upon which such equipment operate as needed to provide in-building coverage in keeping with the design principles in <u>Exhibit A</u>.
- Construction, Installation, Maintenance & Interference. All construction, installation and maintenance shall be performed by Licensee or its contractors in a safe manner consistent with current wireless industry engineering and construction standards and practices, and lien-free. Licensee, with Licensor's cooperation as or if needed, shall obtain all required governmental and quasi-governmental permits, licenses, approvals, and authorizations. Licensee agrees to only install radio equipment of the type and frequency that will not cause measurable interference to the equipment of Licensor or other tenants of the Premises existing as of the date of this Agreement. Should Licensee's equipment cause measurable interference, and provided Licensor gives written notice, Licensee will take all steps necessary to correct and eliminate the interference, Licensor agrees that it and/or any other tenant of the Premises (current or future) will install only such radio equipment that is of the type and frequency that will not cause measurable interference to the existing equipment of Licensee. Should Licensor's or another tenants' equipment cause measurable interference with Licensee, and provided Licensee gives written notice to Licensor of it, Licensor will take all steps necessary to correct and eliminate the interference, including causing other tenants of the Premises causing such interference to correct and eliminate the interference. The parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either party shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction.
- 3. Power & Fiber. Licensor will supply electrical power in quality, quantity, and levels currently available at the Premises, and customary for the operation of similar systems, at Licensor's cost. Notwithstanding the foregoing, no interruption or discontinuance of such electrical power will render Licensor liable to Licensee for damages or relieve Licensee of any of its obligations hereunder, except as such results from the acts or omissions of Licensor. Licensee or the utility provider shall have the right to install fiver utilities on, through, over and/or under

the Premises, provided the location of utilities shall be reasonably approved by Licensor. Upon the installation of the fiber utilizes within the Premises, the System shall include additional space necessary for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among the System and the fiber utilities installed within the Premises.

- 4. Ownership & Control. The System is personal property of Licensee and Licensee at all times owns and controls the System. Licensor and Licensee agree, and Licensor shall so inform, any purchaser or mortgagee of the Premises, of this Agreement and that all equipment forming a part of the System shall be and remain the property of Licensee under all circumstances, under Licensee's exclusive control, free and clear of any liens or encumbrances other than those permitted by Licensee, and shall be deemed to be and remain personal property and not part of the real estate on which the same are located. Without limitation on any other rights of Licensee, such equipment may be removed by Licensee upon expiration or cancellation of the term of this Agreement, as the same may be from time to time extended or renewed, or upon earlier termination, for whatever reason and Licensee shall have ninety (90) days after such expiration or termination to accomplish such removal. Licensee shall restore any areas of Licensor's Premises damaged by such removal, except normal wear and tear.
- 5. <u>Consideration</u>. In consideration for the rights granted herein, Licensor's Premises will receive the benefits of enhanced wireless communications arising from operation of the System. The design, construction, equipment, installation and maintenance of the System shall be at Licensee's sole cost.
- 6. Access. Licensor agrees to provide Licensee, its employees and/or agents access to the Premises Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. (or at any time outside those hours upon twenty-four (24) hours prior written notice to Licensor) for the purpose of design, construction, installation, upgrading, maintenance and repair of the System, including testing of the radio frequency coverage of the area.

7. Term: Default: Termination.

The term of this Agreement shall be five years. The term of this Agreement shall be automatically extended for one (1) additional 5- year renewal term unless Licensee terminates it at the end of the then current term by giving Licensor written notice of the intent to terminate at least 60 days prior to the end of the then current term. The term of this Agreement shall automatically be further extended for two (2) additional 5-year renewal terms unless either Licensor or Licensee terminates it at the end of the then current term by giving written notice to the other party of the intent to terminate at least 60 days prior to the end of the then current term.

Notwithstanding anything to the contrary contained herein, Licensee shall have the right to terminate this Agreement at any time without cause provided that thirty (30) days prior notice is given Licensor. In the event Licensee defaults in the performance of any of its covenants or obligations hereunder and such default continues for a period of sixty (60) days after written notice thereof from Licensor (unless the nature of the event takes longer to cure and Licensee commences a cure within the time period and diligently pursues it thereafter), Licensor may thereafter terminate this Agreement by written notice to Licensee. Upon any such termination, Licensee shall remove the System and repair or restore any damage to Licensor's Premises resulting therefrom,

normal wear and tear excepted. This Agreement may only be terminated in accordance with its terms.

- Indemnification, Insurance, Waiver of Consequential Damages. Licensee shall indemnify and hold Licensor harmless against any claim of liability or loss or bodily injury or property damage resulting from or arising out of the acts or omissions of Licensee or its agents in connection with the use and occupancy of the Premises in connection with the System, excepting claims or damages as may be due or caused by the acts or omissions of Licensor or its agents. Licensee shall procure and maintain throughout the term of this Agreement commercial general liability insurance, with limits of one million dollars (\$1,000,000) per occurrence for bodily injury, death, and damage to or destruction to property. Licensor agrees that Licensee may self insure. The parties waive and release any and all rights of action for negligence against the other which may arise on account of damage to the Premises or to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and to any claims under or through either party as a result of any asserted right of subrogation. All policies of insurance covering property damage obtained by either party concerning or including the Premises or property shall waive the insurer's right of subrogation against the other party. The foregoing notwithstanding, whether the cause of any damage, loss or liability is insurable, insured or not insured, foreseen or unforeseen, in no event shall either party be responsible or liable to the other party for anticipatory profits or any indirect, special, incidental or consequential damages of any kind or nature arising directly or indirectly in connection with the construction, use or operation of the Premises or the exercise of any rights related thereto, whether based on an action or claim in contract or tort, including negligence, strict liability or otherwise.
- 9. Quiet Enjoyment. Licensor covenants that Licensee, upon performing all the covenants, shall peaceably and quietly have, hold and enjoy the Premises and Licensor further covenants that Licensor is seized of good and sufficient title and interest to the Premises and has full authority to enter into this Agreement.

Licensor represents, warrants and covenants that no lead paint, asbestos or other hazardous substance, as defined by any applicable state, federal or local law or regulation, is present at any Premises; Licensor owns or leases the Premises or otherwise has the right to grant the license given in this Agreement; Licensor has obtained all required consents or approvals from any landlord, mortgagee or other person or entity having an interest therein; and Licensor is not in default under any lease with the owner of the Premises and the term of such lease extends to the term of this Agreement with any and all renewal terms.

- 10. <u>Assignment</u>. This Agreement may be assigned by either party to its principal, affiliates, subsidiaries or to any entity which acquires all or substantially all of its assets in the applicable Federal Communications Commission license area by reason of a merger, acquisition or other business reorganization without the consent of the other party. As to other parties; any sale, assignment or transfer by either party must be with the written consent of the other party, such consent not to be unreasonably withheld.
 - 11. Notices & Contacts. All notices hereunder must be in writing and shall be sent

certified mail, return receipt requested, to Licensor at Irene Romero, Administrative Manager, City Attorney's Office, P.O. Box 909, Santa Fe, NM 87504, and to Licensee at 180 Washington Valley Road, Bedminster, NJ 07921, Attention Network - Real Estate, Site: NM4 Convention Center.

12. <u>Miscellaneous</u>. This Agreement contains all agreements, promises and understandings between Licensor and Licensee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either Licensor or Licensee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. This Agreement and the performance thereof shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals as of the date and year last writing below.

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City of Santa Fe	
Ву:	
NAME: Enk Litzenberg	_
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DATE: 7/10/17	

ATTEST:

APPROVED AS TO FORM:

APPROVED: FINANCE DIRECTOR

LICENSEE

Verizon Wireless (VAW) LLC,

d/b/a Verizon Wireless

By:_ Name: Michael Cogar Clifton Corey

Title: Director Netwo

Date:

ADDENDUM TO IN-BUILDING RADIO DISTRIBUTION AGREEMENT

In the event of any conflict between this Addendum and the In-Building Radio Distribution Agreement, this Addendum shall control.

NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Licensor in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. Licensor 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 in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than Licensor and Licensee. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

STATUS OF LICENSEE; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- A. Licensee and its agents and employees are independent contractors performing professional services for Licensor and are not employees of Licensor. Licensee, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Licensor vehicles, or any other benefits afforded to employees of Licensor as a result of this Agreement.
- B. Licensee shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Licensee in the performance of the services under this Agreement.

C. Licensee shall comply with Licensor's Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

RELEASE

Licensee agrees not to purport to bind Licensor to any obligation not assumed herein by Licensor unless Licensee has express written authority to do so, and then only within the strict limits of that authority.

INSURANCE

- A. The Verizon Wireless, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, commercial general liability insurance covering bodily injury and property damage liability, with limits of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate. Such insurance shall provide that the Customer is included as an additional insured as their interest may appear under this Agreement. Upon receipt of notice from its insurer Verizon will use commercially reasonable efforts to provide the Customer is notified no less than thirty (30) days' prior written notice with a limit of cancellation for any reason. The Verizon Wireless shall furnish the Customer with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.
- B. Verizon Wireless shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Verizon Wireless's employees throughout the term of this Agreement. Verizon Wireless shall provide the Customer with evidence of its compliance with such requirement.
- C. Verizon Wireless shall maintain professional liability insurance throughout the term of this Agreement with a limit of \$2,000,000 per claim and aggregate. The Verizon Wireless shall furnish the Customer with proof of insurance of Verizon Wireless's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

APPLICABLE LAW; CHOICE OF LAW; VENUE

Licensee shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Licensee agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

NON-DISCRIMINATION

During the term of this Agreement, with respect to this Agreement, Licensee shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Licensee hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

[Signature Page Follows]

	City of Santa Fe:
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	CITY MANAGER
	DATE: //) 4 (*
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	TEST:
	ANDAY VICH CITY CI FRY
	ANDA/Y. VIGIL, CITY CLERK (III)
	APPROVED AS TO FORM:
	MDM 7/3 MDM 8/30
	CITY ATTORNEY
	on the factor of
	APPRQYED:
	May well 113
	PINANCE DIRECTOR
	LICENSEE:
	Verizon Wireless (VAW) LLC,
	d/b/a Verizon Wireless
	Name: Michael F. Cogar EliFlow Easey
	Title: Director-Network Field Engineering EXECUTUR
	Date: 12 / YM Director
	1)-1/14-18 Engineering

Signature Lines required:

Exhibit "A"

Premises

Please see attached.

verizon /

NM4 SANTA FE CONVENTION CENTER

201 W. MARCY ST. SANTA FE, NEW MEXICO 87501 SANTA FE COUNTY

D.A.S. COMMUNICATION DESIGN





