

**NON-EXCLUSIVE RIGHT OF ENTRY BETWEEN
THE CITY OF SANTA FE AND CELLCO PARTNERSHIP dba VERIZON WIRELESS**

This Non-exclusive Right of Entry ("Agreement") is made and entered into as of the date of the last signature ("Effective Date"), by and between the CITY OF SANTA FE, a municipal corporation ("CITY" or "LICENSOR") and CELLCO PARTNERSHIP, a Delaware partnership, dba VERIZON WIRELESS ("VERIZON" or "LICENSEE"), collectively the "Parties".

WHEREAS, LICENSOR is a fee simple owner of a parking lot located at 100 Water Street, Santa Fe, New Mexico, and

WHEREAS, LICENSEE and LICENSOR are in the process of negotiating an agreement for the lease of the Site, and in order for LICENSEE to determine the viability and feasibility of the Site, LICENSEE desires to enter upon and inspect the Site and/or to temporarily locate communications equipment on the Site to conduct short term radio propagation tests such that it can determine the suitability of the Site for its intended use; and

WHEREAS, LICENSOR desires to allow LICENSEE, its employees, agents or contractors, to enter onto 100 Water Street in order to conduct such investigations, under the terms and conditions stated herein.

WITNESSETH:

In consideration of the mutual promises and covenants herein, LICENSOR and LICENSEE agree to the following:

1. PREMISES

LICENSOR allows LICENSEE and its agents, advisors, employees, consultants, representatives, and independent contractors, including environmental contractors and consultants hired directly or indirectly by Licensee (collectively, the "Licensee Representatives") the non-exclusive right to use and occupy, subject to the terms and conditions of this Agreement, a portion of LICENSOR-owned real property located 100 Water Street, Santa Fe, New Mexico ("Premises"), as shown in white on Exhibit "A" of this Agreement

2. AGREEMENT TERM

a. Initial Term. The initial term of this Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Agreement shall consist of an "Initial Term" of six (6) months with one(1) "Option Term" of three (3) months

b. Option Term The Initial Term shall be extended automatically by the Option Term, subject to thirty days' notice of termination by either party pursuant to Section 9. All terms, covenants and conditions of this Agreement shall remain in full force and effect during any extension of the term.

c. Hold Over. In the event LICENSEE remains in possession of the Premises after the expiration of the Term of this Agreement, such possession may, at the sole option of LICENSOR, be continued as a month-to-month tenancy. During any such month-to-month tenancy terms and conditions of the Agreement shall be otherwise applicable.

3. USE OF PREMISES

LICENSEE's use of the Premises shall at all times comply with the provisions of this Agreement including the following conditions of use:

a. Permitted Use. Use of the Premises is restricted to the temporary use of the Premises to conduct and perform boundary surveys, tree surveys, environmental testing, and radio propagation studies (the "Permitted Activities") No other use of the Premises is allowed without the written consent of the LICENSOR.

b. Utilities. The cost of LICENSEE's use of electric, water and gas shall be the responsibility of the LICENSEE.

c. Solid Waste. LICENSEE shall, at all times during its use of the Premises, keep the Premises free of trash and debris emanating from its operations. LICENSEE shall remove and dispose, at LICENSEE's sole cost and expense, all solid waste generated from LICENSEE's operations at the Premises.

d. Security. LICENSEE shall keep the Premises secured against unauthorized entry during the License Term.

e. Code Compliance. LICENSEE's use of the Premises shall at all times comply with all applicable Codes, Regulations, and Rules be they LICENSOR, County, State, or Federal. This includes but is not limited to the LICENSOR's Municipal Code.

f. Modification of LICENSOR Property. LICENSEE shall not make any modification to the Premises without providing the LICENSOR a formal request that includes proper documentation of any requested modification prior to the alteration.

g. Repairs and Maintenance. LICENSEE shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises. LICENSEE shall, at its sole expense, keep and maintain the Premises in good and clean condition at all times and shall be responsible for the costs of any and all required repairs and/or replacements that arise during the Term of this Agreement that are a result of LICENSEE's use of the Premises. Repairs and replacements required to be made by the LICENSEE shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises.

h. LICENSOR will ensure that LICENSEE, its agents, employees, invitees, are granted access to the Site at the scheduled time(s) that the Permitted Activities will be performed.

i. LICENSEE shall not take any actions that unreasonably interrupt the normal operations of LICENSOR on the Site. LICENSEE agrees that its Permitted Activities shall not cause interference to the use or enjoyment of the property of LICENSOR and any other parties or licensees located at the Site or neighboring landowners, including, but not necessarily limited to interference with radio communication

facilities. In the event that LICENSEE's equipment or Permitted Activities cause such interference to such use or enjoyment, LICENSEE agrees to promptly cease operations until such interference is removed by LICENSEE, at its sole expense.

J. Test Results

i. LICENSOR understands and acknowledges that the environmental testing to be undertaken may create legal duties applicable to LICENSOR if conditions of pollution are discovered and that except to the extent required by law, neither LICENSEE nor LICENSEE Representatives have an obligation to report any test results or conditions to any party as a result of this Agreement. LICENSEE and LICENSEE Representatives will provide copies of test results to LICENSOR unless LICENSOR specifically requests, in writing, prior to the start of testing, not to receive the test results from LICENSEE's review. LICENSOR acknowledges that these tests are performed for LICENSEE's specific purposes and cannot be relied on by LICENSOR in any way as being accurate or sufficient for any purposes. LICENSOR agrees and acknowledges that it is not authorized to share, provide, disseminate, present, and/or make available the test results to any third party unless required by law.

ii. In certain cases, test results regarding the environmental conditions of the property may result in a reporting obligation specific to LICENSEE or LICENSEE Representatives. In any of those cases, LICENSEE or LICENSEE Representative shall, if reasonably possible, notify LICENSOR at least twenty-four (24) hours prior to making the notification but in any case within seventy-two (72) hours after making the notification to the appropriate agency. LICENSOR agrees that LICENSEE and LICENSEE Representatives bear no responsibility for the costs resulting from that reporting and that LICENSEE shall not become responsible for any conditions that it discovers during the Site Investigation.

iii. LICENSOR acknowledges and agrees that any samples that are taken during the activities undertaken pursuant to this Agreement and any investigation-derived media (i.e., drill cuttings, well purge water) generated by the investigation may require off-site disposal based upon test results. LICENSOR agrees to execute all properly completed waste manifests or other documents required for proper disposal of test results. LICENSOR's obligation to sign any properly completed waste manifests or other documents required for proper disposal survives this Agreement so long as those items that require disposal were generated pursuant to this Agreement. The cost of off-site disposal of media will be paid for by LICENSEE or the appropriate LICENSEE Representative, not LICENSOR.

iv. LICENSEE may use the results of the Site Investigation as it deems appropriate and may share the results with third parties, including, but not necessarily limited to attorneys, consultants, contractors, employees and regulators.

5. ASSIGNMENT OR TRANSFER

LICENSEE shall not assign or otherwise transfer this Agreement, without the prior written consent of LICENSOR, which LICENSOR may withhold for any or no reason. Any such actions taken by LICENSEE without LICENSOR's consent shall result in the immediate termination of this Agreement.

6. INSURANCE

a. LICENSEE shall at all times maintain and provide adequate insurance coverage which

includes, without limitation, each of the following:

i. Property Insurance LICENSEE shall carry and maintain in full force and effect during the term of this Agreement "All-Risk" Property insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. LICENSEE shall cause the LICENSOR to be named as an additional insured on such policy of insurance.

ii. Commercial General Liability Insurance which shall be written on an occurrence basis and be at least as broad as the latest version of ISO form or equivalent with limits of \$6,000,000 per occurrence and \$6,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Such policy shall include Broad Form Contractual Liability coverage and shall be endorsed to include the LICENSOR, its, directors, officials, officers, employees, and volunteers as additional insureds as their interest may appear under this Agreement on all primary and excess policies for ongoing and completed operations performed by, or behalf of Contractor. Such additional insured coverage shall be as broad as that provided by ISO forms (ongoing operations) and (completed operations) or equivalent.

iii. Workers' Compensation Insurance with statutory limits, and **Employer's Liability insurance** with limits of \$1,000,000 each accident/disease/policy limit. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the LICENSOR, its directors, officials, officers, employees, agents, and volunteers.

iv. Certificates of Insurance. Upon the Effective Date of this Agreement, and thereafter at any time during the Term of this Agreement that LICENSOR requests, LICENSEE shall provide LICENSOR with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Upon receipt of notice from its insurer(s) LICENSEE shall use commercially reasonable efforts to provide LICENSOR with thirty (30) days prior written notice of cancellation of any required coverage.

v. LICENSEE's insurance shall: (i) provide that such insurance shall not be reduced or eliminated because of any acts of LICENSEE or its officers, directors, partners or employees; (ii) include LICENSOR as an additional insured as their interest may appear under this Agreement; and (iii) provide that such coverage shall be primary and not contributing with respect to any insurance maintained by LICENSOR except in the case of LICENSOR's negligence.

b. The LICENSOR agrees to maintain during the term of this Agreement the following insurance policies:

i. Commercial general liability in the amount of \$2,000,000.00 per occurrence for bodily injury and property damage and \$4,000,000.00 in the annual aggregate. LICENSEE shall be included as an additional insured as their interest may appear under this Agreement.

ii. "All-Risk" property insurance on a replacement cost basis insuring their respective property with no coinsurance requirement.

c. Where legally permissible, each party agrees to waive subrogation against the other party and to ensure said waiver is recognized by the insurance policies insuring the property.

7. INDEMNIFICATION

LICENSEE shall indemnify, hold harmless and defend LICENSOR from all losses, damages, claims and judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from damages occurring on the Premises and LICENSEE's use of the Premises hereunder, including use of the Premises by LICENSEE's employees, agents, representatives, contractors, agents, guests, invitees or permitted assigns

LICENSEE shall cause any and all agreements that LICENSEE enters into with any of the above parties to contain language indemnifying LICENSOR as provided in this Section

8. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by LICENSOR in connection with the 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. The 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 of this License modifies or waives any provision of the New Mexico Tort Claims Act.

9. TERMINATION

a. Either Party may terminate this Agreement with 30-days prior written notice to the other Party.

b. At the termination of this Agreement LICENSEE shall surrender the Premises in the condition in which they were at the inception of this Agreement, excepting:

- i Deterioration caused through reasonable use and ordinary wear and tear;
- ii. Alterations, improvements or conditions made with LICENSOR's written approval.

10. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To LICENSOR:	City of Santa Fe City Manager P.O. Box 909 Santa Fe, NM 87504	To LICENSEE:	Cellco Partnership dba Verizon Wireless One Verizon Way Mail Stop 4AW100 Basking Ridge, New Jersey 07920
With a copy to:	City of Santa Fe Attn: Asset Development Manager P.O. Box 909		Basking Ridge Mail Hub Attn: Legal Intake One Verizon Way

11. NO WAIVER

No waiver of a breach of any of the provisions contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

12. SEVERABILITY

In the event that 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.

13. ENTIRE AGREEMENT

The foregoing constitutes the entire Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title, and interests as well as all of their duties, responsibilities and obligations. Any and all prior Agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Agreement shall not be modified or amended except by a written document signed by the Parties.

14. BINDING EFFECT

This Lease Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

15. LITIGATION EXPENSE

In the event of litigation between the Parties, LICENSEE shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which LICENSOR shall incur in enforcing this Agreement or in recovering any and all damages caused to the Premises by LICENSEE, or LICENSEE's contractors, agents, employees or permitted assigns.

16. HEADINGS

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

17. APPLICABLE LAW, VENUE

In any action, suit or legal dispute arising from this Agreement, 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.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the Parties hereto

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[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below

LICENSOR: CITY OF SANTA FE

John Blair
John Blair (Mar 8, 2024 11:24 MST)
JOHN BLAIR, CITY MANAGER

Mar 8, 2024
DATE. _____

LICENSEE: CELLCO PARTNERSHIP
dba VERIZON WIRELESS

Joseph McGarry
Name Joseph McGarry
Title Associate Dir - RE

DATE Feb 8 23

ATTEST:

Geralyn Cardenas
Geralyn Cardenas (Mar 8, 2024 13:14 MST)
GERALYN CARDENAS, INTERIM CITY CLERK
XIV

APPROVED AS TO FORM:

Marcos Martinez
Marcos Martinez (Mar 4, 2024 08:03 MST)
MARCOS MARTINEZ, SENIOR ASSISTANT CITY ATTORNEY

APPROVED AS TO FINANCE:

Emily K. Oster
EMILY K. OSTER, FINANCE DIRECTOR
Object Org. Code 2122800-460350

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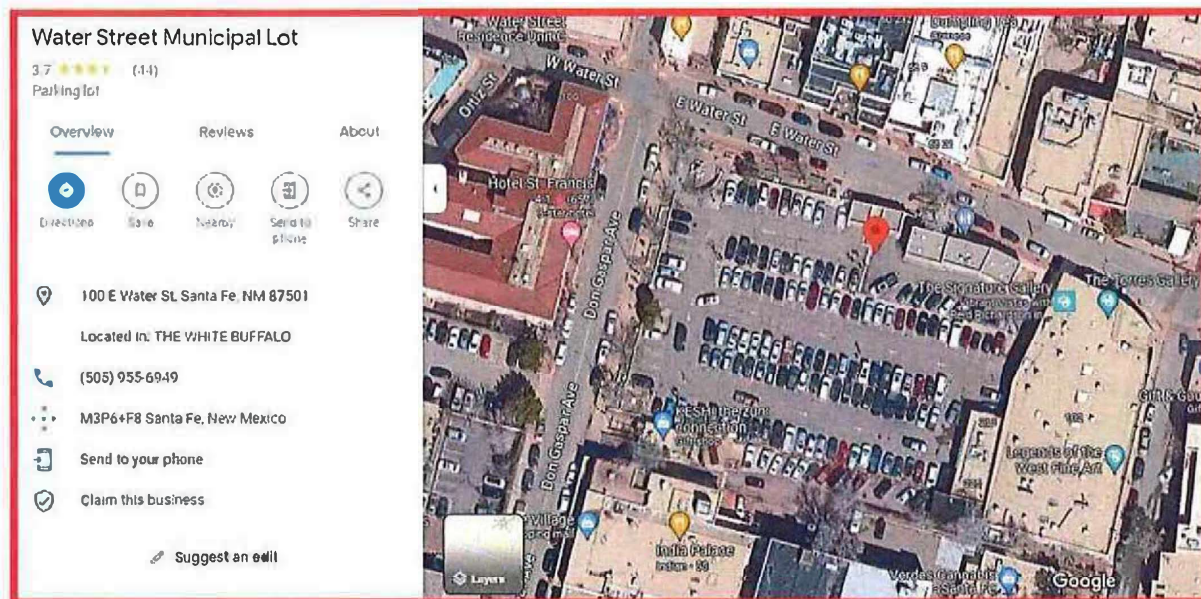
EXHIBIT A
SITE TO BE TESTED

SITE NAME

SITE ADDRESS

VZW NM4 PEYTON GALLERY 5 SC ALT 2

100 E WATER ST



Water Street Municipal Lot

3.7

(14)

Parking lot

Overview

Reviews

About

Directions

Save

Inventory

Send to phone

Share

100 E Water St, Santa Fe, NM 87501

Located in: THE WHITE BUFFALO

(505) 955-6949

M3P6+FB Santa Fe, New Mexico

Send to your phone

Claim this business

Suggest an edit

Layers

Google

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Deleted cell	
Moved cell	
Split/Merged cell	
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Moved from	0
Moved to	0
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Format changes	0
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24-0127 Cellco Partnership dba Verizon Wireless

Final Audit Report

2024-03-08

Created:	2024-03-06
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWjA8n1nu46M2rjy5W_aJGd5fjHm07Vg2

"24-0127 Cellco Partnership dba Verizon Wireless" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)
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-  Document emailed to jwblair@santafenm.gov for signature
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-  Signer jwblair@santafenm.gov entered name at signing as John Blair
2024-03-08 - 6:24:09 PM GMT- IP address: 63.232.20.2
-  Document e-signed by John Blair (jwblair@santafenm.gov)
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2024-03-08 - 8:13:47 PM GMT- IP address: 174.231.23.70



Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)

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Agreement completed.

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