

## ARTICLE 22. VERIZON WIRELESS [VAW] LLC

### SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

- a. “Affiliate”- when used in relation to Grantee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.
- b. “City” - means the City of Leawood, Kansas.
- c. “Communications Service” - means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment. To the extent Licensee’s services are wireless, it shall mean “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19)
- d. “Contract franchise” - means this Ordinance granting the right, privilege and franchise to Grantee to use the City’s Public right-of-way to provide Wireless Services as a Wireless Service Provider.
- e. “Facilities” - means Grantee’s “antennas,” “accessory equipment,” “wireless facilities,” “small cell facilities,” “transmission equipment,” “distributed antenna system,” and any “wireless support structure” (all as such terms are defined or described in K.S.A. 66-2019, as amended) comprising Grantee’s system located within the Public right-of-way, and to the extent permitted under any applicable Laws (defined in Section 3b), that are designed and constructed for the purpose of producing, receiving, amplifying or distributing Wireless Services.
- f. “Grantee” - means VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company d/b/a Verizon Wireless authorized to do business in Kansas, a Wireless Services Provider providing Wireless Services within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- g. “Public right-of-way” - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to Wireless Services or other non-wire communications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public right-of-way owned by the City or other third-parties, such as poles, ducts or conduits, use of which shall require a separate license agreement for attachment to city facilities.

- h. “Wireless Infrastructure Provider” - means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless service provider. (See K.S.A. 66-2019(b)(20))
- i. “Wireless Services” - means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities. (See K.S.A. 66-2019(b)(19))
- j. “Wireless Services Provider” – means a provider of Wireless Services. (See K.S.A. 66-2019(b)(24))

## **SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Wireless Services as a Wireless Services Provider within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.
- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
  - 1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - 2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - 3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

- d. Grantee shall not provide any additional services for which a franchise is required by the City, including but not limited to services as a Wireless Infrastructure Provider, without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 66-2019, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's ordinance for managing the use and occupancy of the Public right-of-way, codified in the Code of the City of Leawood, 2000, Chapter 13, Article 3, and amendments thereto and the City's zoning and land-use laws to specifically include the Leawood Development Ordinance and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.
- c. Grantee shall participate in the Kansas One Call utility location program.

### **SECTION 4. COMPENSATION TO THE CITY.**

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of \$25 per site in the Public right-of-way upon which Grantee has attached its Facilities. The franchise fee shall commence upon the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. As to any new Facility installed at a site during any calendar year, such fee shall be prorated based on the number of days in the calendar year remaining from the Effective Date of the applicable Supplement to the Master License Agreement.

It is understood that Grantee's Facilities are primarily wireless communications antennae and their necessary transmission and accessory equipment, and that the Facilities might be attached to a wireless support structure, utility pole, street light or similar structure.

- b. Grantee shall pay the franchise fee in advance on an annual basis without requirement for invoice or reminder from the City, and within 15 days of the first day of the calendar year for which the payment applies; provided, that as to any new Facility installed during any calendar year, such fee shall be prorated and paid as to that partial year within 30 days after the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- c. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the franchise fee was calculated for the period covered by the payment.
- d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.
- e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- f. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.
- g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 66-2019, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

#### **SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

#### **SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

- a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed, authorized or permitted to do business in the State of Kansas. Grantee shall provide the following insurance:
  1. Statutory Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed and employers' liability with a limit of \$1,000,000 each accident/disease/policy limit.
  2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, (including death) and property damage. The City shall be included as an additional insured as their interest may appear under this Agreement with respect to liability arising from Grantee's operations under this Contract franchise.
- b. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and within fifteen (15) days of any renewal thereof, deliver to the City a certificate of insurance reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force.

- c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way, provided the aforementioned performance bond shall not be required if Grantee has currently posted and in place a comparable \$50,000 bond pursuant to the City's Ordinance for Managing The Use and Occupancy of the Public Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

#### **SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

## **SECTION 8. RESERVATION OF RIGHTS.**

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

## **SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

## **SECTION 10. TERM AND TERMINATION DATE.**

- a. This Contract franchise shall be effective for a term of six (6) years beginning on the Effective Date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for two additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder. In the event a renegotiation is initiated pursuant to this Section, then compensation paid to the City shall also be updated as to reflect the current market rate paid for wireless infrastructure providers within the City.
- c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

- d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

City of Leawood  
Attn: City Clerk  
4800 Town Center Drive  
Leawood, Kansas 66211  
(913)-663-9100

**Grantee:**

Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attn: Network Real Estate

**With a copy to:**

City of Leawood  
Attn: City Attorney  
4205 Town Center Drive  
Leawood, Kansas 66212

or to replacement addresses that may be later designated in writing.

## **SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to (i) any Affiliate of Grantee; (ii) any successor in interest to Grantee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Grantee's assets used to provide Communications Services to residents and businesses located in the City of Leawood, Kansas. Following any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

## **SECTION 13. CONFIDENTIALITY.**

Information provided to the City under this Contract franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

## **SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the "Effective Date").

## **SECTION 15. PUBLICATION OF ORDINANCE**

The City Clerk is hereby directed to publish a copy of this Contract franchise once in the official City newspaper.

## **SECTION 16. PAYMENT OF PUBLICATION COSTS.**

In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 17. SEVERABILITY.**

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 18. FORCE MAJEURE.**

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 2928C; Effective Date 02-25-19)