

**Memorandum
Public Works Department**



To: City Manager
Subject: Water Tower Lease
Date: September 8, 2011
Number: 2011-267

Verizon Wireless would like to install cellular antennas on the City of Rock Island's water tower located at 1405 36th Street.

A lease agreement has been negotiated with an initial term of five (5) years. This lease will be automatically renewed for four (4) successive five (5) year terms with the following fees:

- \$2,400 per month for the first year of the lease
- 3% annual increase
- \$1,000 landscaping fee per term of the lease (every five years)
- \$1,000 administrative fee

Recommendation

The Public Works Department recommends that the City Council direct the City Manager to sign the attached lease agreement with Verizon Wireless to lease antenna space on the City's water tower.

Submitted by: Robert T. Hawes, P.E., Assistant City Manager/Public Works Director
Michelle Martin, Assistant to the Public Works Director

Approved by: John C. Phillips, City Manager

SITE LICENSE AGREEMENT (Municipal Water Tower Attachments)

THIS LICENSE AGREEMENT (the "License"), made this ____ day _____, by and between City of Rock Island, an Illinois Municipal Corporation ("Licensor") and GTE Wireless of the Midwest Incorporated, an Indiana corporation d/b/a Verizon Wireless, ("Licensee").

1. License of Premises.

Subject to the terms and conditions of this License and the provisions of Division 76 of Article II of the Illinois Municipal Code (65 ILCS 5/11-76), Licensor hereby licenses to Licensee on an exclusive basis a portion of the real property described on Exhibit A ("the Property") consisting of (a) a ground space area of approximately 640 square feet (20' x 32') and (b) space on Licensor's structure for the installation of antennas and related equipment, together with the nonexclusive use of (c) such easements as are necessary for the initial installation as described on attached Exhibit E, and for ingress and egress and the installation of utilities (the areas identified in (a), (b) and (c) collectively referred to as the "Premises"). The nature and the extent of the utility installation shall be specified on the site plan and attached as Exhibit E.

2. Term.

- a. The initial term of this License shall be five (5) years (the "Initial Term"), commencing on September 1, 2011 ("Commencement Date").
- b. This License shall be automatically extended for four (4) successive five (5) year terms ("Renewal Term(s)"), upon the same terms and conditions, unless Licensee notifies Licensor in writing of Licensee's intention not to renew this License at least one hundred and twenty (120) days prior to the expiration of the existing term. In the event Licensor determines that the water tower located on the Property no longer serves a useful purpose to Licensor's provision of water service and Licensor intends to remove the water tower from the Property, Licensor may terminate this License at the end of the then-current or any subsequent five (5) year term upon giving Licensee one hundred and twenty (120) days notice prior to the expiration of the relevant term.

3. License Fees.

- a. From and after the Commencement Date, Licensee shall pay Licensor an annual "License Fee" in the amount of twenty-eight thousand eight hundred dollars (\$28,800), payable in equal monthly installments.
- b. The License Fee shall increase annually during the initial and Renewal Terms, effective as of each anniversary of the Commencement Date, by an amount equal to three percent (3%) per annum above the amount of the License Fee in effect for the year immediately prior to such increase. The License Fee shall be payable monthly in advance without demand, offset, abatement, diminution or reduction, to Licensor, at Licensor's address specified below or any other person or firm as Licensor may from time to time, designate in writing at least sixty (60) days in advance of any License Fee payment date.
- c. Within forty-five days of the full execution of this License, and within thirty days of the beginning of each Renewal Term, the Licensee will pay Licensor a One Thousand Dollar (\$1,000) landscaping fee to offset Licensor's cost of maintaining the Premises.
- d. Within forty-five days of the full execution of this License, Licensee shall pay to Licensor as additional rent a one-time fee in the amount of One Thousand Dollars (\$1,000) for Licensor's attorney's fees associated with the negotiation of this Lease.
- e. All payments must have the City of Rock Island lease number _____ referenced on them in order to be processed.
- f. Notwithstanding anything to the contrary herein, Licensee shall have no obligation to make any rental or other payments to Licensor until Licensor has provided Licensee a complete and fully executed Internal Revenue Service Form W-9, in a form acceptable to Licensee.

- g. Within fifteen (15) days of obtaining an interest in the Property or this License, any assignee(s), transferee(s) or other successor(s) in interest of Licensor (any such entity, a "Successor Payee") shall provide to Licensee certain documentation (the "Rental Documentation") evidencing the Successor Payee's interest in, and right to receive payments under, this License, including without limitation: (i) documentation, acceptable to Licensee in Licensee's reasonable discretion, evidencing the Successor Payee's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Licensee, for any party to whom rental payments are to be made pursuant to this License; and (iii) other documentation requested by Licensee in Licensee's reasonable discretion. From time to time during the Term of this License and within thirty (30) days of a written request from Licensee, any Successor Payee shall provide updated Rental Documentation in a form reasonably acceptable to Licensee. Delivery of Rental Documentation to Licensee by any Successor Payee shall be a prerequisite for the payment of any rent by Licensee to such party and notwithstanding anything to the contrary herein, Licensee shall have no obligation to make any rental payments to any Successor Payee until Rental Documentation has been supplied to Licensee as provided herein.

4. Use.

The Premises may be used for (i) the transmission and reception of communications signals within or utilizing such frequency band or frequencies which are within those for which Licensee, or any entity which controls, is controlled by or is under common control with Licensee, is duly licensed by the Federal Communications Commission, and (ii) the attachment, installation, operation, alteration, maintenance, repair, replacement and relocation of any approved antennas and related equipment, cables and facilities and improvements related thereto, and (iii) activities related to any of the foregoing, provided such activities do not require an expansion of the Premises or violate Licensee's duties on non-interference set forth herein.

LICENSOR AND LICENSEE AGREE THAT THE PRIMARY FUNCTION OF THE WATER TOWER IS TO PROVIDE WATER SERVICE TO THE MUNICIPAL WATER CUSTOMERS. SHOULD THE LICENSOR DETERMINE, IN ITS SOLE DISCRETION, THAT THE PERFORMANCE OF THIS AGREEMENT INTERFERES WITH THAT PRIMARY FUNCTION, THE LICENSOR MAY TERMINATE THIS AGREEMENT WITH ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE TO LICENSEE. LICENSOR MAY EXERCISE THIS TERMINATION RIGHT ONLY IN THE EVENT THAT LICENSEE'S USE OF THE PREMISES UNDER THIS AGREEMENT INTERFERES WITH LICENSOR'S ABILITY TO UTILIZE THE WATER TOWER TO STORE WATER AND/OR LICENSOR'S ABILITY TO CONSTRUCT A NEW WATER TOWER ON THE PROPERTY. LICENSEE SHALL HAVE THE RIGHT DURING SAID ONE HUNDRED TWENTY (120) DAY PERIOD TO CURE THE INTERFERENCE PROBLEM TO THE SATISFACTION OF THE LICENSOR; PROVIDED, HOWEVER, THAT IF SAID CURE IS NOT ACHIEVED IN THE SOLE JUDGEMENT OF THE LICENSOR, LICENSEE MUST HAVE COMPLETELY VACATED THE TOWER BY THE EXPIRATION OF SAID ONE HUNDRED TWENTY (120) DAY PERIOD. IF LICENSEE DETERMINES, IN ITS SOLE JUDGEMENT, THAT THE OPERATION OF THE TOWER BY LICENSOR IS CREATING INTERFERENCE WITH LICENSEE'S USE AND OPERATION OF ITS FACILITIES AT THE TOWER, LICENSEE MAY TERMINATE THIS AGREEMENT BY GIVING THE LICENSOR ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE. LICENSEE'S RIGHT TO TERMINATE THIS AGREEMENT IS SUBJECT TO ALL OF THE TERMS HEREOF REGARDING LICENSEE'S OBLIGATION TO REMOVE EQUIPMENT AND BUILDING AT THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

5. Installation and Maintenance.

Licensee shall install, construct and maintain the antenna facilities on the Premises, at its sole cost and expense, in compliance with approved plans set forth at Exhibit C and the installation and maintenance criteria listed on the attached Exhibit D.

6. Access.

Licensee and its authorized employees, engineers, technicians, or properly authorized contractors of Licensee or personnel under their direct supervision shall be entitled to twenty-four (24) hour, seven (7) days per week access to the Premises. All access to the Premises by Licensee shall be subject in each instance to the reasonable security requirements and reasonable rules and regulations from time to time in effect at the Property, of which Licensor shall inform Licensee in writing. (Please see attached Exhibit B.) Licensor shall provide Licensee thirty (30) days

prior written notice of any revisions to such rules and regulations, unless public safety or health concerns reasonably necessitate shorter notice periods. Notwithstanding the foregoing, in the event Licensee requires or requests Licensor or Licensor's representative to be present in order for Licensee to gain access to the Premises outside of Licensor's normal business hours, Licensee will be responsible for any reasonable out-of-pocket costs incurred by Licensor in providing such access to the Premises.

7. Interference.

Licensee further agrees that it will supply Licensor with a twenty-four (24) hour contact phone number so that in the event that the Licensee's equipment interferes with the normal and proper operation of Licensor's and/or any prior lessee's facilities on the Property, the Licensee be notified. Licensee agrees to install and operate only equipment that does not cause interference to Licensor's or other lessees or licensees of the Property ("Pre-Existing User"); provided that their installations and use predate that of the Licensee's installation. In the event that the Licensee's equipment cause such interference or any permitted subsequent modification or addition causes such interference, Licensee shall take all steps necessary to correct and eliminate the interference. If the interference is substantial then Licensee shall have five (5) days to resolve the interference problem. If the interference is substantial and cannot be resolved within five (5) days, Licensee shall power down its equipment and/or cease operations in order to correct and eliminate such interference provided that Licensee may operate its equipment intermittently during off-peak hours for testing purposes only. If the interference is not substantial, Licensee shall work diligently and take all necessary and appropriate action to cure such interference as promptly as possible without having to power down its equipment unless the interference becomes substantial. Regardless the length of time necessary to cure such interference, Licensee shall not be in default of this provision as long as (a) the interference is not substantial or (b) Licensee remains powered down (except for intermittent testing) while addressing substantial interference. If Licensee determines that it is unable to cure any substantial interference within a period of thirty (30) days, Licensee may, at its sole option, terminate this License. Licensor agrees not to allow any lessee of the Property whose equipment is installed or modified subsequent to Licensee's then current operation of Licensee's equipment ("Subsequent User") to interfere with the operation of Licensee. In the event Licensee is subject to any such interference, Licensor shall (or shall cause other Subsequent Users) take all steps necessary to correct and eliminate the interference. If such interference is not eliminated within five (5) days after Licensor's receipt of notice of such interference from Licensee, Licensor shall (or shall cause such other Subsequent User) cease such Subsequent User's operations if requested by Licensee until the interference is eliminated. If such Subsequent User is unable to eliminate the interference, or reduce it to a level acceptable to Licensee, within a period of thirty (30) days, then Licensee may, in addition to any other rights it may have, terminate this License. Nothing in this section shall be deemed or interpreted to authorize Licensee to illegally transmit on any frequencies or to provide any protection to Licensee from interference from any other person in the event that Licensee is operating on any unlicensed frequency spectrum. Licensor shall impose upon future lessees of the Property a similar duty to refrain from interfering with Licensee.

Notwithstanding the provisions contained herein, if Licensee's equipment interferes with Licensor's 911 System, Non emergency radio system, or Fire Rescue Emergency Radio Systems, Licensee shall either cure such interference or shut down its equipment immediately, but in no event later than two (2) hours from notice of such interference, and if Licensee fails to take such action, Licensor may shut down Licensee's equipment and Licensee shall have no recourse against Licensor as a result of such action. The Parties acknowledge that such action would constitute drastic action, and Licensor represents that it will exercise its rights under this paragraph only when necessary and as a last resort.

Licensee's Contact number:

Verizon Wireless NOC

1-800-264-6620

8. Assignment.

Licensee will have the right to assign, sell or transfer its interest under this License without the approval or consent of Licensor, to the Licensee's principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all or substantially all of Licensee's assets in the marked defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization.

Upon notification to Licensor of such assignment, Licensee will be relieved of all future performance, liabilities and obligations under this License. As to other parties, this License may not be sold, assigned or transferred without the written consent of the Licensor, which consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute and assignment hereunder.

9. Taxes and Assessments.

Upon presentation of sufficient and proper documentation, Licensee shall pay any and all increased ad valorem and personal property taxes, assessments charges, fees, or Licenses levied upon the Property and the Premises as a result of Licensee's use thereof.

10. Insurance.

Licensee shall, at Licensee's sole cost and expense, procure and continue in force during the term of this License, including any Renewal Term, the Insurance Policies listed on Exhibit C hereto with the policy limits stated thereon.

11. Release and Hold Harmless.

- a. Licensee hereby releases Licensor, and their respective agents, employees, officers, directors, shareholders and partners (collectively the "Releasees") from, and shall not hold Releasees liable for, any liability for personal injury, consequential damages, loss of income or damage to or loss of property or persons, or loss or use of any property in or about the Premises from any cause whatsoever unless such damage, loss or injury directly results from the negligence or willful misconduct of the Releasees.
- b. Except to the extent caused by the negligence or willful misconduct of Releasees, Licensee agrees to indemnify, defend and hold Releasees harmless from and against injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) which may arise or be imposed upon or incurred by or asserted against Releasees occurring during the term of this License, or during any period of time when Licensee is conducting business activity on the Premises pursuant to this Agreement, whether before the Commencement Date hereof or after the expiration date hereof, arising from:
 - (i) any work or act done in, on or about the Premises or any part thereof, including the installation, use, maintenance, repair or removal of the antenna facilities, at the direction of Licensee, its agents, contractors, subcontractors, servants, employees, Licensees invitees, except if such work or act is done or performed by Licensor or its agents or employee;
 - (ii) any negligence or other wrongful act or omission on the part of Licensee or any of its agents, contractors, subcontractors, servants, employees, subtenants, invitees, or Licensees;
 - (iii) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, unless caused by the negligence or willful misconduct of Licensor, its employees or agents; and
 - (iv) any failure on the part of Licensee to perform or comply with any of the covenants, Licenses, terms, provisions, conditions or limitations contained in this License on its part to be performed or complied with.
- c. Licensor agrees to indemnify, defend and hold Licensee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from any willful act or omission or the negligence of Licensor or its employees or agents, or the breach of this Agreement, except to the extent attributable to the negligence or intentional act or omission of Licensee and except to the extent that the licensor would be immune under the Illinois Municipal Tort Immunity Act, its employees, agents or independent contractors.

12. Removal of the Equipment Upon Termination.

Following any termination or expiration of this License, Licensee shall remove all of its equipment. Footings, foundations, and concrete will be removed to a depth of one (1) foot below grade. In performing such removal, Licensee shall restore the Premises and any personal property and fixtures thereon to as good a condition as they were prior to the installation or placement of the equipment, reasonable wear and tear excepted. If Licensee fails to remove such equipment within ninety (90) days after expiration or earlier termination of this License, Licensor may, upon thirty (30) days prior written notice to Licensee issued no sooner than the expiration of the 90-day removal period, remove and dispose of the equipment and Licensee shall reimburse Licensor for the costs of such removal and restoration of the Premises. Moreover, Licensor may, after said thirty (30) day notice, deem the equipment abandoned in which event the equipment shall become Licensor's property.

13. Hazardous Substances.

Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor represents, warrants and agrees (a) that to Licensor's best knowledge, neither Licensor nor any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Premises in violation of any law or regulation, except as disclosed herein, and (b) that Licensor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs arising from any breach of any representation, warranty or License contained in this paragraph. In addition, Licensor shall defend, indemnify and hold harmless Licensee from all other losses, liabilities, claims and/or costs arising from or related to the environmental condition, including costs of remediation, which are not the result of any act of Licensee. As used in this paragraph, "Hazardous Material" shall mean hazardous or radioactive material, polychlorinated biphenyls, friable asbestos or other hazardous or medical waste substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or by any other federal, state or local law, statute, rule, regulation or order (including any Governmental Requirements) concerning environmental matters, or any matter which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a material safety data sheet. This paragraph shall survive the termination of this License.

14. Termination by Licensee.

Provided Licensee is not in default hereunder, Licensee shall have the right to terminate this License after the Initial Term without cause by giving Licensor at least one hundred and eighty (180) days prior written notice and Licensee shall not be required to make any further payment of License Fees. Provided Licensor is not in default hereunder, Licensor shall have the right to terminate this License after the Initial Term without cause by giving Licensee at least one hundred and eighty (180) days prior written notice.

15. Utilities.

Licensee shall contract directly with the local utility company to install a separate utility meter(s) for its utility service(s) and Licensee shall pay all costs related to such installation(s) and utility service(s). The utility meter(s) will be required to use remote read technology at the cost of the licensee.

16. Notices.

All notices, demands, requests and other communications hereunder shall be in writing either personally delivered or mailed, via certified mail, return receipt requested, or sent by overnight commercial courier for overnight guaranteed delivery to the following addresses:

If to Licensor, to:

City of Rock Island
ATTN: City Manager
1528 Third Avenue
Rock Island, IL 61201

With a copy to:

City of Rock Island
Public Works Department
c/o Public Works Administration
1309 Mill Street
Rock Island, IL 61201

If to the Licensee, to:

GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

Notices will be deemed to have been given upon either receipt or rejection. Unless or until either of the respective addresses is changed by notice in writing sent to the other party as set forth above, thereafter to the address contained in such notice. Any notice herein, which is required by Licensor, may be given by City's designated Manager and shall be deemed effective for all purposes herein.

17. Marking and Lighting Requirements.

Licensee shall construct, install and maintain its equipment, antenna and related facilities at the Premises in compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commissions ("FCC"). Licensee shall hold harmless Licensor against any penalty or citation resulting from Licensee's failure to maintain required lighting of its equipment, unless such failure is the result of Licensor's gross negligence or willful misconduct. Licensor shall hold harmless Licensee against any penalty or citation resulting from Licensor's failure to maintain required lighting and/or marking of the water tower on the Property.

18. Default, Right to Cure.

The following will be deemed a default and a breach of this License: (i) Licensee's non-payment of the License Fee if such License Fee remains unpaid for more than thirty (30) days after receipt of written notice from Licensor of such failure to pay; or (ii) either party's failure to perform any other term or condition under this License within forty-five (45) days after receipt of written notice from the non-defaulting party specifying the failure, provided the defaulting party shall have such extended period as may be required beyond the forty-five (45) days if the nature of the cure is such that it reasonably requires more than forty-five (45) days and the defaulting party commences the cure within the forty-five (45) day period and thereafter continuously and diligently pursues the cure to completion. Notwithstanding the foregoing to the contrary, it shall be a default under this License if Licensor fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by Licensor if the failure to perform such an obligation interferes with Licensee's ability to conduct its business on the Property; provided, however, that if the nature of Licensor's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this License if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.. If the defaulting party remains in default beyond any applicable cure period, the non-defaulting party will have the right to exercise any and all rights and remedies available to it under law and equity.

19. Warranties.

Licensee and Licensor each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this License and bind itself hereto through the party set forth as signatory for the party below.

Licensor represents and warrants that: (i) Licensor solely owns the Property as a legal lot in fee simple, or controls the Property and structure by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Licensee's permitted use and enjoyment of the Premises under this License; (iii) as long as Licensee is not in default then Licensor grants to Licensee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Licensor's execution and performance of this License will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Licensor; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Licensor will use best efforts to provide promptly to Licensee a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

20. Condemnation.

In the event Licensor receives notification of any condemnation proceedings affecting the Property, Licensor will provide notice of the proceeding to Licensee within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Licensee's reasonable determination, to render the Premises unsuitable for Licensee, this License will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Licensee will include, where applicable, the value of its equipment, conduits, fixtures, damages, moving expenses, prepaid License Fees, and business dislocation expenses, provided that any award to Licensee will not diminish Licensor's recovery. Licensee will be entitled to reimbursement for any prepaid License Fee on a prorata basis to the end of the term.

21. Casualty.

Licensor will provide notice to Licensee of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the antenna facilities or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Licensee's sole determination, then Licensee may terminate this License by providing written notice to the Licensor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof and to be reimbursed for any prepaid License Fee on a prorata basis to the end of the term. In the event this License is not terminated following a casualty event, Licensor shall promptly repair and restore the Tower and the License Fee shall abate during the period of repair in proportion to the degree to which Licensee's use of the Premises is impaired.

22. Waiver of Licensor's Liens.

Licensor waives any and all lien rights it may have, statutory or otherwise, concerning any equipment, antennas, facilities, personal property or any portion thereof, all of which are the personal property of Licensee for purposes of this License, regardless of whether any portion is deemed real or personal property under applicable law, and Licensor consents to Licensee's right to remove all or any portion of the equipment, antennas, facilities or personal property from time to time in Licensee's sole discretion and without Licensor's consent.

23. Right of First Refusal.

If Licensor elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) grant to a third party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Licensee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this License to such third party, Licensee shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If Licensee fails to meet such bona fide offer within thirty (30) days after written notice thereof from Licensor, Licensor may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer. Notwithstanding the foregoing, the parties acknowledge and agree that

Licensee's right of first refusal pursuant to this Paragraph 23 shall not apply to a sale or transfer of the Property, if such sale or transfer is part of Licensor's sale or transfer of Licensor's entire water system to third party water purveyor.

24. Rights Upon Sale.

Should Licensor, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tower thereon to a purchaser other than Licensee, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and or Property occupied by Licensee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this License and any such purchaser or transferee shall recognize Licensee's rights hereunder under the terms of this License. To the extent that Licensor grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tower and/or Property occupied by Licensee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this License to said third party, Licensor shall not be released from its obligations to Licensee under this License, and Licensee shall have the right to look to Licensor and the third party for the full performance of this License.

25. Miscellaneous.

- a. For the purpose of providing constructive notice hereof, Licensor and Licensee hereby agree to execute a Memorandum of License in recordable form and Licensee shall have same recorded in the land records of the appropriate county and state.
- b. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.
- c. Failure of Licensor to insist on strict performance of any of the conditions or provisions of this License, or to exercise any of Licensor's rights hereunder, shall not waive such rights.
- d. This License shall be governed by and construed in accordance with the laws of the state in which the Premises are located and jurisdiction and venue shall be in Rock Island County, Illinois.
- e. Any amendment to this License must be in writing and executed by both parties.
- f. The terms and conditions contained in this License will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.
- g. The provisions of this License relating to indemnification from one Party to the other Party shall survive any termination or expiration of this License.
- h. Licensee has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 12 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, Licensee holds over in violation of Paragraph 12 or this paragraph, then the License Fee then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 12 shall be equal to the License Fee applicable during the month immediately preceding such expiration or earlier termination.

[SIGNATURES APPEAR ON PAGE IMMEDIATELY FOLLOWING.]

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date aforesaid.

LICENSOR:

CITY OF ROCK ISLAND

BY: _____

NAME: John C. Phillips

TITLE: City Manager

DATE: _____

FEDERAL TAX I.D. NO.: 36-6006077

LICENSEE:

GTE Wireless of the Midwest Incorporated, an Indiana corporation
d/b/a Verizon Wireless

BY: _____

NAME: Beth Ann Drohan

TITLE: Area Vice President Network

DATE: _____

EXHIBIT "A"

PROPERTY

The Property known as: Water Tower, 1405 36th Street, Rock Island, Illinois 61201.

[Legal Description to be Inserted]

EXHIBIT "B"

WATER TOWER ACCESS GUIDELINES

The City of Rock Island has implemented security measures for its water tower sites. Tower Access Permits will be needed to gain access to these sites. See "*" below for exception.

During normal business hours (Monday through Sunday, 8:00 a.m. to 10:45 p.m.), you must report to the front desk of the City of Rock Island's Police Department located at 316 16th Street, Rock Island, Illinois.

After hours, you must contact the City of Rock Island's Police Department at (309) 786-5911 to make arrangements to get a key.

- You will be required to fill out a questionnaire on why you need access to the site, what you will be doing there, and an estimated time you think you will be in the site.
- A Rock Island Permit must be presented to get a key and must be kept on the person when at any of the sites.
- You will be required to sign a "Liable for Damage" form/contract that will state you and/or your company will pay the City of Rock Island \$610.00 in the event the key is not returned in accordance with these rules or is lost. You may not get another key until the \$610.00 is paid in full.
- **Once you have been issued a key, you must call the City of Rock Island's Police Department to inform them when you enter and exit each site. The site must not be left unattended at anytime.** When you finish your work, or need to leave the site temporarily, you must lock the gate.
- The key issued must be returned within 30 minutes of leaving the site using the guidelines above.
- The key can be checked out for a period not to exceed 12 hours. If more time is needed you must contact the City of Rock Island's Police Department and request additional time.
- The City of Rock Island may suspend the license of persons found to be violation these guidelines.

* In the event your company needs to temporarily utilize the services of another contractor, a list of the names, sex/race and dates of birth of those contractors must be submitted to the City of Rock Island's Police Department **48 hours in advance** for a clearance check. Once this is completed **a permitted employee from your company must be on site with the contractor the entire time they are present.**

Print Name: _____

Company Name: _____

Signature: _____

Date: _____

EXHIBIT "C"

INSURANCE REQUIREMENTS

The Licensee may not use the premises or commence work until it has obtained all insurance required under this Exhibit C and until the insurance has been approved by the owner in its reasonable discretion. The Licensee may not allow any contractor or subcontractor to commence work on his or her contract or subcontract until all similar insurance required by the contractor or subcontractor has been so obtained and approved. Insurance required consists of the following:

- (a) Worker's Compensation Insurance for all of the Licensee's employees engaged in work at the work site. Licensees will guarantee that all contractors and subcontractors shall obtain Worker's Compensation Insurance for their employees including a waiver of subrogation.
- (b) Commercial general liability insurance with Licensor named as an additional insured taken out and maintained for the duration of the contract by the Licensee, contractor pursuant to Licensee's indemnity obligations hereunder and subject to standard policy provisions and exclusions. The amounts of insurance must be at least as follows:
 - (i) Commercial General Liability Insurance. Not less than two million dollars (\$2,000,000) for injuries including wrongful death and/or property damage per occurrence.
 - (ii) All insurance acquired under the terms of this article must be obtained through an insurance company authorized to do business in the State of Illinois, and certificates of insurance must be filed with the City Clerk with the execution of this Agreement and with each policy renewal or change in carriers.

EXHIBIT "D"

INSTALLATION AND MAINTENANCE CRITERIA

- A. Licensee shall, at Licensee's expense, keep and maintain the Premises in a commercially reasonable condition and repair during the term of this License. Licensee agrees to maintain the antenna facilities in proper operating condition and within industry accepted safety standards. All installations and operations in connection with this License by Licensee must be in compliance with all federal, state, and local laws, codes and regulations, including but not limited to local zoning requirements. Licensor assumes no responsibility for the licensing, operation and/or maintenance of the antenna facilities. Licensee shall comply with all of the terms of its FCC License.
- B. Prior to installing or allowing any antenna facilities to be installed in or on the Premises, Licensee shall submit detailed engineering plans and specifications of the planned installation to Licensor, with an additional copy to the City's designated Manager for Licensor's written approval, which approval shall not be unreasonably withheld or delayed. Licensor's review of Licensee's plans shall include a review of the appearance of the planned installation. Licensor's approval of any installation is not a representation that such installation of the antenna facilities is in compliance with all applicable laws, ordinances, rules and regulations or that it will not cause interference with other communications operations on the Property. All construction activities must have prior approval and supervision of the City of Rock Island Public Works Department. Licensee will notify Licensor to arrange a mandatory pre-construction meeting on the site. No work shall begin on the site until after this pre-construction meeting.
- C. All installation and other work to be performed by Licensee hereunder will be done in such a manner so as not to interfere materially with, delay, or impose any additional expense upon Licensor in maintaining the Premises. In no event will Licensor be required to consent to any installation or other work by Licensee, which would, in Licensor's sole judgment, adversely affect any part of the Premises. All cable runs, conduit and sleeving shall be installed in a good workmanlike manner. Cables and transmission lines shall be routed and attached in accordance with current, state of the art, industry practices. The antenna facilities shall be identified with permanently marked, weather proof tags at the following locations: (i) each antenna bracket; (ii) at the transmission line Premises entry point; (iii) at the interior wall feed through or any other transmission line exit point; and (iv) at any transmitter combiner, duplexer, or multifed receive port. In addition, all Licensee telephone blocks, demarcs, and cables shall be clearly identified with the Licensee's name, type of line, and circuit number.
- D. Licensee shall at all times obtain and maintain any Licenses, permits, and approvals necessary for the installation or operation of the antenna facilities at its sole cost and expense.
- E. Licensee shall install a solid cedar fence around all outside ground equipment. This fence must visually hide the outside ground equipment from the right-of-way and private property owners. Inside the cedar fence there must contain a vegetation barrier to prevent unsightly vegetation growth.
- F. If the Licensee installs a pre-fabricated building to enclose its ground equipment it must seek prior approval from the City of Rock Island

EXHIBIT "D"

(Continued)

COMMUNICATIONS EQUIPMENT

1. The Tower shall contain the antennas, antenna mounts, and associated wiring and cabling listed below.
2. Tower and ground spaced for locating communications equipment and appurtenances associated therewith as more full described below.

Antennas

Number

Type

___ (___) Panel antennas measuring approximately ___ height X ___ width X ___ depth mounted on the water tank

___ (___) Cables measuring ___ thick

Equipment cabinets on a support frame contained within the Leases Premises

___ (___) Microwave dishes measuring approximately ___ (___) in diameter

___ (___) Cables for the microwave dishes

EXHIBIT "E"

SITE PLAN

[VZW Survey to be Inserted]