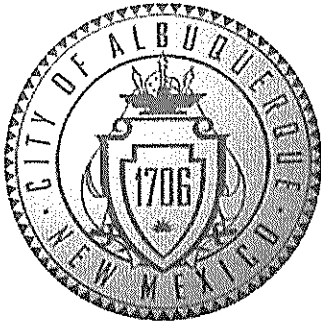


EC-21-274




Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

February 16, 2021

TO: Cynthia Borrego, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: First Amendment to the Lease and Agreement between the City of Albuquerque and Cellco Partnership d/b/a Verizon Wireless

Attached for Council action is a copy of a First Amendment to the Lease and Agreement between the City of Albuquerque and Cellco Partnership d/b/a Verizon Wireless.

Purpose: The original Lease and Agreement expires on September 30, 2025. The First Amendment to the Lease and Agreement provides Cellco Partnership d/b/a Verizon Wireless with an extension of its existing lease term of six additional five-year option terms, thus extending the Lease and Agreement term to September 30, 2055.

The original Lease and Agreement provides for Verizon Wireless to lease the Sunport's cellphone monopole tower and associated grounds surrounding the tower. In addition to extending the term of the lease, the First Amendment to the Lease and Agreement provides that the Tenant shall have the sole right to enter into leases, sublessees, licenses, sublicenses or other agreements with other providers of communication services to allow their antennae and equipment on the monopole tower in exchange for a revenue-sharing arrangement with the City.

Additionally, the First Amendment to the Lease and Agreement provides for an expansion of the ground equipment lease area in order to facilitate the Tenant's management of sub-leases.

This First Amendment to the Lease and Agreement also updates contact information for the parties involved as well as updates federal language that is required by the Federal Aviation Administration to be in all contracts entered into by the airport.

Term: The First Amendment to the Lease and Agreement has six (6) five (5) year option terms which, if exercised, will expire on September 30, 2055.


First Amendment to the Lease and Agreement between the City of Albuquerque and Celco Partnership d/b/a Verizon Wireless.

Revenue Amount: One-time payment of \$35,000, plus \$33,347.76 per year escalated by 5% annually, as well as the revenue sharing amount of \$500.00 per month escalated annually by 3% for each other provider co-locating on the tower.

The attached transmittal of the First Amendment to Lease and Agreement is submitted for consideration and action by the City Council.

First Amendment to the Lease and Agreement between the City of Albuquerque and Cellco Partnership d/b/a Verizon Wireless.

Approved:



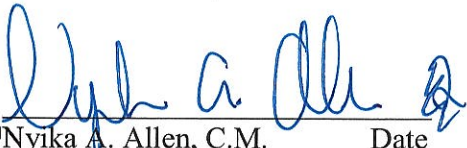
Sarita Nair Date
Chief Administrative Officer 2/19/21

Approved as to Legal Form:

DocuSigned by:
Esteban A. Aguilar, Jr. 2/16/2021 | 3:38 PM MST

7961D99D046F4DB...
Esteban A. Aguilar, Jr. Date
City Attorney

Recommended:



Nyika A. Allen, C.M. Date
Director of Aviation 2/16/2021

DS
le
DS
RCM

DS
LND
DS
LL

FISCAL IMPACT ANALYSIS

TITLE: First Amendment to the Lease and Agreement between the City of Albuquerque and Cellco Partnership d/b/a Verizon Wireless

R: O:

FUND: 611

DEPT: 700611

- [X] No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- [] (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2021	Fiscal Years 2022	2023	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[X] Estimated revenues not affected				
[] Estimated revenue impact				
Revenue from program				
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	0.00
Total Revenue	\$0.00	\$0.00	\$0.00	0.00

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: This will not effect budgets in current or future fiscal years.**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

PREPARED BY:

APPROVED:

DocuSigned by:

DocuSigned by:

Joshua Castellano-Gonzalez 2/16/2021 | 12:09 PM MST
 FISCAL ANALYST
 50D99E167B42103...

Myka A. Allen 2/16/2021 | 12:07 PM PST
 DIRECTOR
 7F93EEDDB46946A... (date)

REVIEWED BY:

DocuSigned by:

DocuSigned by:

DocuSigned by:

Kevin E. Noel 2/16/2021 | 1:29 PM MST
 EXECUTIVE BUDGET ANALYST
 D5R34511B40046...

Lawrence L. Davis 2/16/2021 | 3:11 PM MST
 BUDGET OFFICER (date)
 BD22ED7BFD9344E...

Cristine Berner 2/16/2021 | 3:13 PM MST
 CITY ECONOMIST
 E02C282349CC47D...

Cover Analysis

1. What is it?

It is a First Amendment to the Lease and Agreement between the City of Albuquerque and Cellco Partnership d/b/a Verizon Wireless to lease the Sunport's cellphone monopole tower and associated grounds surrounding the tower.

2. What will this piece of legislation do?

Council approval of this First Amendment to the Lease and Agreement will allow the Aviation Department to extend its existing lease term by six additional five-year option terms, thus extending the Lease and Agreement term to September 30, 2055.

In addition to extending the term of the lease, the First Amendment to the Lease and Agreement provides that the Tenant shall have the sole right to enter into leases, sublessees, licenses, sublicenses or other agreements with other providers of communication services to allow their antennae and equipment on the monopole tower in exchange for a revenue-sharing arrangement with the City.

The First Amendment to Lease and Agreement also provides for an expansion of the ground equipment lease area in order to facilitate the Tenant's management of sub-leases.

This First Amendment to the Lease and Agreement also updates contact information for the parties involved as well as updates federal language that is required by the Federal Aviation Administration to be in all contracts entered into by the airport.

3. Why is this project needed?

The First Agreement will allow the Aviation Department to obtain additional revenue from the original Lease and Agreement by extending the lease term.

4. How much will it cost and what is the funding source?

There is no cost to the City as this is a revenue producing agreement.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

The First Agreement to the Lease and Agreement is estimated to generate a one-time payment of \$35,000, plus \$33,347.76 per year escalated by 5% annually, as well as the revenue sharing amount of \$500.00 per month escalated annually by 3% for each other provider co-locating on the tower.

FIRST AMENDMENT TO LEASE AND AGREEMENT

Cellco Partnership d/b/a Verizon Wireless

This First Amendment to the Lease and Agreement ("**First Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("**City**") and **Cellco Partnership d/b/a Verizon Wireless** ("**Tenant**") (City and Tenant being collectively referred to herein as the "**Parties**").

Section 1. Recitals.

1.1 The City owns the real property described on **Exhibit A** attached hereto and made a part hereof ("**City Owned Land**").

1.2 City and Tenant (or its predecessor-in-interest) entered into that certain Lease and Agreement dated May 8, 2001 (as the same may have been amended, collectively, the "**Agreement**" or "**Lease**"), pursuant to which the Tenant leases "**Land**" together with an "**Access Easement**", all as more particularly described in the Lease and referred to as the "**Premises**", which Premises is also described on **Exhibit A**; and

1.3 Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Premises, all as more particularly described therein; and

1.4 Tenant has granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA; and

1.5 The Parties hereby acknowledge and agree that all applicable increases and escalations to the rental payments under the Lease shall continue in full force and effect through the Option Terms (as defined in the Lease and amended herein);

1.6 The Lease originally commenced on October 1, 2000 and, without giving effect to the terms of this First Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease, the Lease is otherwise scheduled to expire on September 30, 2025; and

1.7 City and Tenant desire to amend the Lease to include an additional six (6)

consecutive renewal Option Terms (as defined in the Lease) of five (5) years each, which will allow a maximum extension of the Lease through September 30, 2055, and to otherwise modify the Lease as expressly provided herein.

Section 2. Amendment. In consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

2.1 Section 5(B) of Lease is hereby deleted and replaced in its entirety to read as follows:

Option Terms. So long as Tenant is not in default, Tenant shall have the right to extend the term of the Lease for ten (10) consecutive periods of five (5) years each. Tenant shall notify City at least one (1) month prior to the commencement of the next Option Term of Tenant's intent to extend the term of the Lease, as amended herein

2.2 Section 4 of the Lease is hereby replaced in its entirety as follows:

Section 4. Use by Other Providers.

A. Tenant shall design and construct the Antennae Facilities (inclusive of an Antennae Tower) to accommodate no less than two other third-party telecommunications providers ("**Other Provider(s)**"). Toward this end, Tenant shall design and construct the monopole so that antennas for Other Providers may be placed on it. The Parties hereby agree that Tenant (and/or American Tower) shall have the sole right to enter into leases, sublessees, licenses, sublicense or other agreements with Other Providers, including AT&T (as defined in the First Amendment), for the use of the Premises for said Other Providers' respective equipment space, including the Expansion Area (as defined in **Exhibit A** of the First Amendment).

B. Tenant shall cooperate with each new Other Provider in connection with their locating and placing their antennas and other facilities on the Antennae Facilities. Tenant may enter into a lease, license or other agreement with terms and conditions at the discretion of Tenant by which the Other Provider will be entitled to install their antennas upon Tenant's Antennae Facility.

C. Each new Other Provider shall be solely responsible for the cost of locating and placing their equipment onto the Antennae Facilities and into any ancillary support facilities, including any support buildings. The Other Providers shall also be responsible for any liabilities that arise from the Other Provider's use of the Antennae Facilities.

D. Tenant shall have the right to sublease Antenna space on the Antennae Tower to Other Providers without the consent of City, with Tenant having the exclusive right to lease said Other Providers ground space for related equipment within the Premises, as expanded herein this First Amendment. Tenant shall notify City in writing of all sublease or assignment requests or proposals, which Tenant receives for use of the Antennae Facilities. Tenant shall also immediately provide City with any information relating to an actual or prepared lease to an Other Provider that City requests. Failure to comply with this provision shall place Tenant in default and give City the option of exercising any of the rights described in paragraph 16, herein below.

E. It is further agreed that provided that the monopole is structurally capable of supporting City's desired antennas and the location is reasonably acceptable to Tenant, City may elect at any time to use space on the Antennae Facilities otherwise available for use by an Other Provider. If City so elects, such use shall be without charge to City. Tenant shall cooperate with City in connection with City's locating and placing its antennas and other facilities on the Antennae Facilities and into the ancillary support facilities. If the location and placement cannot be agreed to, City shall make the final resolution and plan, which shall bind both Tenant and City. City's installation and use of the Antennae Facilities shall not damage or interfere with Tenant's operations in any way.

F. City hereby consents to the use of the Premises and collocation within the Antennae Facilities and on the Antennae Tower by AT&T Mobility (or their parents, affiliates, subsidiaries, assigns, and successors-in-interest) ("**AT&T**"). AT&T shall be entitled to install equipment and improvements within the Premises, including but not limited to, antennas, dishes, cabling, additional storage buildings or equipment shelters. City agrees that such consent shall include a waiver of any separate land lease requirements by and between the City and AT&T. The Parties acknowledge that the Federal Aviation Administration ("**FAA**") regulations govern the height of structures on and surrounding the Premises and that the FAA has designated certain aviation easements for the safety of air traffic on and around the Premises. Accordingly, any height extensions of the Antenna Tower required by

Tenant for AT&T or any Other Providers' use of the Premises and collocation shall be subject to the City's approval, which approval shall not be unreasonably withheld or conditioned provided that the FAA approves the requested height extension. The Parties hereby acknowledge and agree that AT&T's collocation shall be subject to the Revenue Share provisions below in Section G.

G. Revenue Share.

1) Subject to the other applicable terms, provisions, and conditions of this Section, Tenant shall pay City an amount equal to five hundred and No/100 Dollars (\$500.00) per month for each new sublease, license or other collocation agreement for the use of any portion of the Premises entered into by and between Tenant or American Tower and an Other Provider subsequent to the Effective Date (such amount, the "**Collocation Fee**"). Commencing on the October 1, 2021, and on each successive annual anniversary thereof, such Collocation Fee shall increase by an amount equal to three percent (3%) of the then current Collocation Fee. Notwithstanding anything to the contrary contained herein, the Collocation Fee for each AT&T shall start at the dollar amount specified above and increase on the first anniversary of the initial payment of the Collocation Fee.

2) The initial payment of the Collocation Fee shall be due within ninety (90) days of the due date by Tenant or American Tower of the first collocation payment paid by an Other Provider. In the event a sublease or license with an Other Provider expires or terminates, Tenant's obligation to pay the Collocation Fee for such sublease or license shall automatically terminate upon the date of such expiration or termination. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation to pay to City and City hereby agrees not to demand or request that Tenant pay to City any Collocation Fee in connection with the sublease to or transfer of Tenant's obligations and/or rights under the Lease, as modified by this First Amendment, to any subsidiary, parent or affiliate of Tenant or American Tower, provided that any sublessee or transferee of Tenant's rights and/or obligations under the Lease shall become responsible for payment of any Collocation Fees which may accrue under this Lease upon such sublease or transfer.

3) City hereby acknowledges and agrees that Tenant and American Tower have the sole and absolute right to enter into, renew, extend, terminate, amend, restate, or otherwise modify (including, without

limitation, reducing rent or allowing the early termination of) any future or existing subleases, licenses or collocation agreements for occupancy on the tower installed on the Premises (such tower, the "**Tower**"), all on such terms as Tenant and/or American Tower deem advisable, in Tenant's and/or American Tower's sole and absolute discretion, notwithstanding that the same may affect the amounts payable to the City pursuant to this Section.

4) Notwithstanding anything to the contrary contained herein, City hereby acknowledges and agrees that Tenant shall have no obligation to pay and shall not pay to City any Collocation Fee in connection with: (i) any subleases, licenses, or other collocation agreements between Tenant (or American Tower), or Tenant's (or American Tower's) predecessors-in-interest, as applicable, and American Tower or any third parties, or such third parties' predecessors or successors-in-interest, as applicable, entered into prior to the Effective Date (any such agreements, the "**Existing Agreements**"); (ii) any amendments, modifications, extensions, renewals, and/or restatements to and/or of the Existing Agreements entered into prior to the Effective Date or which may be entered into on or after the Effective Date.

2.3 Section 28 of the Lease is hereby deleted and replaced in its entirety to read as follows:

Section 28. Approvals, Consents and Notices.

A. All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile or email transmission to the "FAX" number or e-mail address given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address and/or FAX number and e-mail address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation
	Albuquerque International Sunport
Certified Mail:	PO Box 9948
	Albuquerque, NM 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE - 3rd Floor
	Albuquerque, NM 87106

Telephone: (505) 244-7700
FAX Transmission: (505) 842-4278
Email: nallen@cabq.gov

Tenant: Verizon Wireless
Tenant Official: Attn.: Network Real Estate

Title:
**Certified Mail and
Personal Delivery:** 180 Washington Valley Road
Bedminster, NJ 07921

with copy to:
American Tower
Attn.: Land Management
10 Presidential Way, Woburn, MA 01801;
and also with copy to:
Attn.: Legal Dept. 116 Huntington Ave.
Boston, MA 02116.

If notice, consent, or approval is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such notice, consent, or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile or email transmission, unless provided otherwise in this Agreement.

2.5 Section 29(D) of the Lease is hereby deleted and replaced in its entirety to read as follows:

29(D). Compliance with Laws, Rules, Regulations and Procedures. Tenant shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, sub-lessees, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with and conform to all present and future statutes and ordinances, and rules and regulations promulgated thereunder, of all federal, state, City and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Tenant, Tenant's Premises, or Tenant's operations and activities under this Agreement. Tenant shall observe and obey all lawful and

applicable executive instructions, administrative instructions, Airport security requirements, access control procedures, minimum standards, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof.

29(D)(1) Non-Discrimination Provisions. Tenant shall at all times comply with the City, State, and Federal Non-Discrimination Provisions attached hereto as **Exhibit B** and incorporated herein as if set forth in full.

Section 3. Effect of First Amendment. Except as herein expressly amended, the terms and conditions of the Lease shall remain unchanged and shall continue in full force and effect unless there is a conflict between the terms and conditions of the Lease and this First Amendment, in which event the terms and conditions of the First Amendment shall control.

Section 4. Approval of First Amendment. This First Amendment shall not become effective or binding until approved by the Albuquerque City Council and signed by the Chief Administrative Officer of the City of Albuquerque.

Section 5. Waiver. In no event shall City or Tenant be liable to the other for, and City and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary, or similar damages.

Section 6. Counterparts. This First Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this First Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the First Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the First Amendment by all Parties to the same extent as an original signature.

Section 7. Additional Consideration for First Amendment. As additional consideration for entering into this First Amendment to the Lease, Tenant shall pay to City a one-time payment in the amount of **Thirty-Five Thousand and No/100 Dollars (\$35,000.00)**, payable within thirty (30) days of the Effective Date and subject to the receipt by Tenant of an original Memorandum of Lease, attached as **Exhibit C**, executed by Landlord.

Section 8. Expansion of the Premises. In connection with this First Amendment and commencing as of the Effective Date, the Parties hereby acknowledge and agree that the Premises is hereby expanded to include the area that is in the approximate shape and location attached hereto into the depiction within **Exhibit A** (the "***Expansion Area***"). In connection with this expansion, Tenant, its agents, employees and independent contractors, shall have the right to enter upon that portion of the City Owned Land lying beyond the Premises at any time for purposes of evaluating the land and to perform (or cause to be performed) test borings of the soil, environmental audits, engineering studies and to conduct a boundary, as-built or similar survey of all (or any portion of) the Expansion Area to be prepared by a surveyor duly licensed under the laws of the state in which the Expansion Area is located. City hereby agrees that upon the execution of this First Amendment the Premises shall be deemed to include the Expansion Area.

Section 9. Signature Process. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

[SIGNATURES COMMENCE ON NEXT PAGE]

IN WITNESS WHEREOF, City has caused this First Amendment to be executed by its Chief Administrative Officer, and Tenant has caused the same to be executed by its appropriate and authorized officers.

City of Albuquerque:

By: _____ **Date:** _____
Sarita Nair
Chief Administrative Officer

Recommended:

By: _____ **Date:** _____
Nyika A. Allen, C.M.
Director of Aviation

Tenant: Cellco Partnership d/b/a Verizon Wireless

By: ATC Sequoia LLC, a Delaware limited liability company
Title: Attorney-in-Fact

By: _____ **Date:** _____

EXHIBIT A

CITY'S OWNED LAND

The City's Owned Land consists of the entire legal taxable lot owned by City as described in a deed (or deeds) to City of which the Premises is a part thereof with such City Owned Land being described below:

TRACT "G-1" OF MUNICIPAL ADDITION NO. 9, AS THE SAME IS SHOWN
AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF
BERNALILLO COUNTY, NEW MEXICO, ON FEBRUARY 25, 1992 IN PLAT BOOK 92C, FOLIO 27.

Being situated in the County of Bernalillo, State of New Mexico, and being known as
Bernalillo County APN: _____.

[EXHIBIT A CONTINUED ON NEXT PAGE]

PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Premises consists of that portion of the City's Owned Land as defined in the Lease which shall include access and utilities easements. The square footage of the Premises shall be the land area conveyed to Tenant in the Lease as indicated in the legal description below:

A LEASE SITE LOCATED ON THE EAST END OF A FOUR LEVEL PARKING STRUCTURE WITHIN A PORTION OF TRACT "G-1" OF MUNICIPAL ADDITION NO. 9, AS SHOWN AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON FEB. 25, 1992, IN BOOK C92, FOLIO 27, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE HEREIN DESCRIBED LEASE SITE, FROM WHICH THE ALBUQUERQUE CONTROL SYSTEM MONUMENT "G-7A", HAVING NEW MEXICO STATE PLANE COORDINATES, CENTRAL ZONE (NAD 1927) OF N = 1476657.56, AND E = 392629.11, BEARS N 32°04'23" E, A DISTANCE OF 3425.67 FEET;

THENCE, S 00°47'10" W, A DISTANCE OF 14.00 FEET TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, N 89°12'50" W, A DISTANCE OF 18.00 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, N 00°47'10" E, A DISTANCE OF 14.00 FEET TO THE NORTHWEST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, S 89°12'50" E, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING;

CONTAINING 252 SQUARE FEET, 0.0058 ACRES, MORE OR LESS.

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the City Owned Land currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Premises to and from a public right of way.

EXPANSION AREA

Tenant shall have the right to replace this depiction with description obtained from an as-built survey conducted by Tenant.

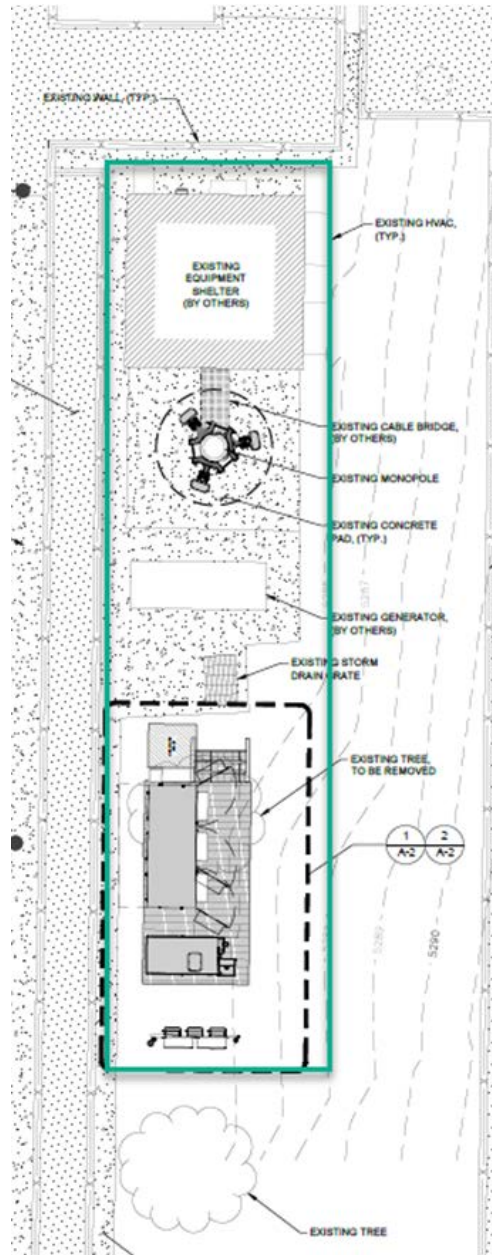


EXHIBIT B

Non-Discrimination Provisions

1. State and Local Compliance. Tenant agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the Premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, and City's affirmative action policies and practices.

2. Federal Compliance.

2.1 General Civil Rights Provision. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant. This provision obligates Tenant for the period during which the property is used or possessed by Tenant and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.2 Title VI Clauses for Compliance with Nondiscrimination Requirements. During the performance of this contract, Tenant, for itself, its assignees, and successors in interest (herein this subsection referred to as the "**Contractor**") agrees as follows:

(1) Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and

Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(3) Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

(4) Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the Contractor under the contract until the Contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition,

the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.3 Title VI Clauses for Lease of Real Property. Tenant, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities listed below.

In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

2.4. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Tenant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by

expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

3. Disability Laws and Accessibility Requirements. Tenant shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. With respect to any improvements Tenant constructs on the Premises, Tenant agrees to meet all the requirements of the ADA which are imposed directly on the Tenant or which would be imposed on the City as a public entity. Tenant agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any acts or omissions of Tenant or its contractors or agents in violation of the ADA.

**EXHIBIT C
MEMORANDUM OF LEASE**

Prepared by and Return to:

American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Ian P. Fitzgerald, Esq.
ATC Site No: 413090
ATC Site Name: Blue Chey NM
Assessor's Parcel No(s): _____

Prior Recorded Lease

Reference:

Book _____, Page _____
Document No: _____
State of New Mexico
County of Bernalillo

This Memorandum of Lease (the "**Memorandum**") is entered into as of the latter signature date hereof, by and between **City of Albuquerque**, a New Mexico municipal corporation ("**City**") and **Cellco Partnership d/b/a Verizon Wireless** ("**Tenant**").

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **City Owned Land and Lease.** The City owns the real property described on **Exhibit A** attached hereto and made a part hereof ("**City Owned Land**"). City and Tenant (or its predecessor-in-interest) entered into that certain Lease and Agreement dated May 8, 2001 (as the same may have been amended, collectively, the "**Agreement**" or "**Lease**"), pursuant to which the Tenant leases "**Land**" together with an "**Access Easement**", all as more particularly described in the Lease and referred to as the "**Premises**", which Premises is also described on **Exhibit A**.

2. **American Tower.** Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Premises, all as more particularly described therein. In connection with these responsibilities, Tenant has also granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA.
3. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be September 30, 2055. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
4. **Expansion Area.** The parties hereby agree to expand the Premises to include the Expansion Area, as depicted below in **Exhibit A.**
5. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control.
6. **Notices.** All notices, consents, and approvals required by the Lease shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile or email transmission to the "FAX" number or e-mail address given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address and/or FAX number and e-mail address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation Albuquerque International Sunport
Certified Mail:	PO Box 9948 Albuquerque, NM 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE - 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
FAX Transmission:	(505) 842-4278

Email: nallen@cabq.gov

Tenant: Verizon Wireless
Tenant Official: Attn.: Network Real Estate
Title:
**Certified Mail and
Personal Delivery:** 180 Washington Valley Road
Bedminster, NJ 07921

with copy to:
American Tower
Attn.: Land Management
10 Presidential Way, Woburn

7. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Tenant have each executed this Memorandum as of the day and year set forth below.

CITY

2 WITNESSES

City of Albuquerque,
a New Mexico municipal corporation

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared

_____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TENANT

WITNESS

Cellco Partnership d/b/a Verizon Wireless

By: ATC Sequoia LLC,
a Delaware limited liability company
Title: Attorney-in-Fact

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this ____ day of _____, 202____, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

EXHIBIT A

CITY'S OWNED LAND

The City's Owned Land consists of the entire legal taxable lot owned by City as described in a deed (or deeds) to City of which the Premises is a part thereof with such City Owned Land being described below:

TRACT "G-1" OF MUNICIPAL ADDITION NO. 9, AS THE SAME IS SHOWN
AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF
BERNALILLO COUNTY, NEW MEXICO, ON FEBRUARY 25, 1992 IN PLAT BOOK 92C, FOLIO 27.

Being situated in the County of Bernalillo, State of New Mexico, and being known as
Bernalillo County APN: _____.

[EXHIBIT A CONTINUED ON NEXT PAGE]

PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Premises consists of that portion of the City's Owned Land as defined in the Lease which shall include access and utilities easements. The square footage of the Premises shall be the land area conveyed to Tenant in the Lease as indicated in the legal description below:

A LEASE SITE LOCATED ON THE EAST END OF A FOUR LEVEL PARKING STRUCTURE WITHIN A PORTION OF TRACT "G-1" OF MUNICIPAL ADDITION NO. 9, AS SHOWN AND DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON FEB. 25, 1992, IN BOOK C92, FOLIO 27, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE HEREIN DESCRIBED LEASE SITE, FROM WHICH THE ALBUQUERQUE CONTROL SYSTEM MONUMENT "G-7A", HAVING NEW MEXICO STATE PLANE COORDINATES, CENTRAL ZONE (NAD 1927) OF N = 1476657.56, AND E = 392629.11, BEARS N 32°04'23" E, A DISTANCE OF 3425.67 FEET;

THENCE, S 00°47'10" W, A DISTANCE OF 14.00 FEET TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, N 89°12'50" W, A DISTANCE OF 18.00 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, N 00°47'10" E, A DISTANCE OF 14.00 FEET TO THE NORTHWEST CORNER OF THE HEREIN DESCRIBED LEASE SITE;

THENCE, S 89°12'50" E, A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING;

CONTAINING 252 SQUARE FEET, 0.0058 ACRES, MORE OR LESS.

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the City Owned Land currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Premises to and from a public right of way.

EXPANSION AREA

Tenant shall have the right to replace this depiction with description obtained from an as-built survey conducted by Tenant.

