

ORDINANCE 902

AN ORDINANCE amending the Option and Easement Agreement between the City of Tenino, a Washington Municipal Corporation located at 149 Hodgden Street South, Tenino, Washington, (GRANTOR) and Verizon Wireless, LLC, a Delaware Limited Liability Company located at One Verizon Way, Basking Ridge, New Jersey (GRANTEE). GRANTOR AND GRANTEE (or their predecessors in interest) are parties to that certain Option and Easement Agreement dated August 22, 1996, as may have been previously amended and or assigned (the "Agreement") pursuant to which GRANTEE is leasing or licensing from GRANTOR a portion of that certain property located at the SE corner of City Park, Section 19-16-1W, in the City of Tenino, County of Thurston, Washington.

WHEREAS, the current agreement was duly entered into on August 22, 1996; and

WHEREAS, the City Council of the City of Tenino desires to continue the agreement;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TENINO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section I. The City of Tenino is the GRANTOR and Verizon Wireless, LLC, is the GRANTEE. Grantor and Grantee may be reference in this First Amendment individually as a "Party" or collectively as the "Parties."

Section II. The above described Option and Easement Agreement between the City of Tenino and Verizon Wireless, LLC, is hereby amended as follows:

1. Term. Notwithstanding anything contained in the Agreement to the contrary, the Agreement shall expire on May 31, 2022. Commencing on June 1, 2022, the Agreement shall be extended for 5 years ("Initial Extension Term"). The term of the Agreement shall thereafter automatically extend for 4 additional terms of 5 years each (each, an "Additional Extension Term"), unless GRANTEE terminates the Agreement by giving GRANTOR notice of such termination at least 30 days prior to the expiration of the Initial Extension Term or then-current Additional Extension Term.

2. Rent. Commencing on June 1, 2022, the annual rent shall be \$14,000.00, to be paid in equal monthly installments on the first day of the month, in advance, to GRANTOR or such other person as GRANTOR may designate in writing at least 30 days in advance of any rental payment date. Beginning on June 1, 2023, the annual rent shall increase by 2% over the annual rent then in effect and by 2% over the then-current annual rent on each one-year anniversary of June 1, 2023 thereafter. Accordingly, the rental and associated increases in the Agreement shall not apply to the Initial Extension Term or Additional Extension Terms.

3. Indemnification. Except for Grantors negligence or willful misconduct, GRANTEE shall protect, indemnify, and save GRANTOR harmless from and against any damage, cost or liability including reasonable attorney fees, for injuries to persons or property arising from acts or omissions of GRANTEE, its employees, agents or sub-contractors,

howsoever caused. GRANTEE will be responsible for any damages caused by his employees to GRANTOR equipment and/or fixtures and shall provide all repairs/replacements, as appropriate, at no cost to GRANTOR.

4. Independent Status of GRANTEE. The parties to this contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the GRANTEE and the GRANTOR, its officers, officials, employees, and volunteers, the GRANTEE's liability hereunder shall be only to the extent of the GRANTEE's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the GRANTEE's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

5. Insurance Requirements of GRANTEE. The GRANTEE shall obtain insurance coverage at the GRANTEE's cost that shall be maintained in full force and effect during the term of this agreement, as follows:

The insurance required shall be issued by an insurance company(s), authorized to do business within the State of Washington. If an insurance company provides the coverage the GRANTOR, shall be included by blanket additional insured endorsement as additional insureds as their interest may appear under this agreement under the insurance policy(s) except workers compensation and employer's liability. If the GRANTEE is self-insured, or a member of a risk sharing pool approved by the State of Washington the additional insured requirement is waived by the GRANTOR. All policies/coverages shall be primary to any other valid and collectable insurance. The GRANTOR does not waive its right to subrogation against the GRANTEE or its subcontractors, and the policy shall be so endorsed. Upon receipt of notice from its insurer(s) GRANTEE shall provide GRANTOR, 30-days advance notice of any insurance cancellation.

The GRANTEE shall submit to GRANTOR, within 15 days of the contract effective date, a Certificate of Insurance, which outlines the coverage and limits defined in the Insurance section. GRANTEE shall submit renewal certificates as appropriate during the term of the contract.

(a) Subcontractors. GRANTEE shall REQUIRE all subcontractors to obtain and maintain substantially the same coverage as required of GRANTEE and include endorsement the GRANTOR as additional insureds under the subcontractor's policies and furnish separate certificates and endorsements for each subcontractor.

(b) No Limitation. GRANTEE's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the GRANTEE to the coverage provided by such insurance, or otherwise limit the GRANTOR's recourse to any remedy available at law or in equity.

(c) Scope of Insurance. GRANTEE shall obtain insurance of the types described below:

- (i) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form or a substitute form providing equivalent liability coverage. The GRANTOR shall be included as an additional insured as their interest may appear under this agreement
- (ii) Commercial General Liability insurance shall be written on ISO occurrence forms or a substitute form providing equivalent coverage, and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability assumed under an insured contract and liability arising from explosion, collapse or underground property damage. The GRANTOR shall be included as an additional insured as their interest may appear under this Agreement under the GRANTEE's Commercial General Liability insurance policy with respect to the work performed for the GRANTOR using ISO Additional Insured endorsements CG 20 10 10 01 and CG 20 37 10 01 for completed operations or substitute endorsements providing equivalent coverage. If the GRANTEE is self-insured, or a member of a risk sharing pool approved by the State of Washington the additional insured requirement is waived by the GRANTOR.
- (iii) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability/Stop Gap Liability. The GRANTOR will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this GRANTEE or any subcontractor or employee of the GRANTEE which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the GRANTEE; the GRANTEE shall indemnify the GRANTOR and guarantee payment of such amounts.

(d) Amounts of Insurance. GRANTEE shall maintain the following insurance limits:

- (i) Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 per accident.

- (ii) Commercial General Liability insurance shall be written with limits of \$1,000,000 each occurrence, \$2,000,000 general aggregate limit.
- (iii) Industrial Insurance Coverage: The GRANTEE shall provide or purchase employer's liability insurance coverage prior to performing work under this contract with a limit of \$1,000,000 each accident, \$1,000,000 disease - each employee, and \$1,000,000 disease - policy limit.

(e) Other Insurance Provisions. The insurance policies are to contain the following provisions for Automobile Liability, and Commercial General Liability insurance:

The GRANTEE's insurance coverage shall be primary insurance as respect the GRANTOR. Any insurance, self-insurance, or insurance pool coverage maintained by the GRANTOR shall be excess of the GRANTEE's insurance and shall not contribute with it. The policy shall provide endorsement stating as such.

(f) GRANTEE'S Insurance for Other Losses. GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, GRANTEE's employee owned tools, machinery, equipment.

6. Continued Effect. Except as amended hereby, all of the other terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between any term and provision of the Agreement and this First Amendment, the terms and provisions of this First Amendment shall control. In addition, except as otherwise stated in this First Amendment, all initially capitalized terms shall have the same respective defined meaning stated in the Agreement. All captions are for reference purposes only and shall not be used in the construction or interpretation of this First Amendment.

7. Ratification and Reaffirmation. GRANTOR and GRANTEE do hereby ratify, reaffirm, adopt, contract for and agree to be, or continue to be, bound by all of the terms and conditions of the above-referenced Agreement. Except as modified by this First Amendment, all of the terms and conditions of the Agreement are incorporated by reference herein as if set forth at length. It is acknowledged and agreed that the execution of this First Amendment by the Parties is not intended to and shall not constitute a release of either Party from any obligation or liability which said Party has to the other pursuant to the Agreement.

8. Selection of Law, Venue, and Mediation. The Parties agree that this agreement is made and entered into under the laws of the State of Washington. The parties hereto agree that the venue for any litigation that may arise from the performance of this agreement shall be Thurston County District Court, Olympia, Washington.

Prior to litigation of any dispute arising out of this Agreement, the Parties agree to submit the matter to mediation on terms and conditions to be agreed upon or, failing such agreement, to the Dispute Resolution Center of Thurston County. Each party will be responsible for their own costs of mediation, including attorney's fees, and share the mediation service fee equally.

Section III. This ordinance shall become effective five days after publication as required by law.

Signed and approved by the mayor on the 11th day of June, 2019.

Wayne Fournier, Mayor

ATTEST:

1ST Reading: May 14, 2019

2nd Reading: June 11, 2019

John C. Millard, Clerk/Treasurer

APPROVED AS TO FORM:

Richard L. Hughes, City Attorney

Date: _____