

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at [www.FargoND.gov/streaming](http://www.FargoND.gov/streaming). They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, July 15, 2019).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of the following Ordinances:
  - a. Relating to the International Building Code.
  - b. Relating to the International Residential Code.
  - c. Relating to the International Existing Building Code.
  - d. Relating to the International Energy Conservation Code.
  - e. Relating to the International Mechanical Code.
  - f. Relating to the International Fuel Gas Code.
  - g. Relating to the International Property Maintenance Code.
  - h. Relating to Fire Protection and Prevention.
- 2. 2nd reading and final adoption of the following Ordinances:
  - a. Relating to Plumbing Code.
  - b. Relating to Waterworks System.
  - c. Annexing a Certain Parcel of Land Lying in the Northeast Quarter of Section 11, Township 138 North, Range 49 West.
  - d. Rezoning Certain Parcels of Land Lying in Selkirk Place First Addition.
  - e. Rezoning Certain Parcels of Land Lying in Madelyn's Meadows Second Addition.
- 3. Receive and file Cost Share Agreement with Xcel Energy, Inc. and the Kilbourne Group, LLC for cost sharing expenses related to the burying of the overhead lines and necessary secondary connections.
- 4. Resolution Authorizing Sale of Property at 302 42nd Street South at a minimum bid of \$62,640.00.
- 5. Applications for property tax exemptions for improvements made to buildings:
  - a. Timothy S. and Kim E. Jacobson, 1115 12th Avenue South (5 year).
  - b. Diane R. Heagle, 912 9th Avenue South, Unit 1 (5 year).
  - c. Seth J. and Michaela J. Dye, 1116 12th Avenue South (5 year).
  - d. Travis W. Buzick, 1504 2nd Avenue South (5 year).
  - e. Mukund P. and Sungja L. Sibi, 1010 8th Street South (5 year).
  - f. Renee O'Brien, 820 2nd Street North (5 year).

- g. Sadiah and Sameyah Khan, 1110 3rd Avenue North, Unit 540E (5 year).
  - h. Justin and Elizabeth Frye, 1250 5th Street North (5 year).
  - i. Justin Slack, 1441 12th Avenue South (5 year).
6. Certificate of Completion and Release of Forfeiture for the Woodrow Wilson Project.
7. Site Authorizations for Games of Chance:
  - a. Arc Upper Valley at Prairie Brothers Brewery.
  - b. Metro Sports Foundation at Scheels Arena.
8. Applications for Games of Chance:
  - a. Benefit for Finley's Fight Hosted by Friends of Finley for a raffle on 8/8/19; Public Spirited Resolution.
  - b. Sons of Norway for a raffle from 9/1/19 to 12/7/19.
  - c. Holy Spirit Catholic Church for bingo, raffle and calendar raffle from 9/9/19 to 10/13/19.
  - d. Veterans Honor Flight of ND/MN for a raffle on 8/17/19.
  - e. YMCA of Cass & Clay Counties for a raffle on 8/6/19.
  - f. Fargo Angels Hockey for a raffle and raffle board from 8/13/19 to 12/7/19.
9. Pledged securities as of 6/30/19.
10. Receive and file the post-sale bond results report as prepared by Baker Tilly (Refunding Improvement Bonds, 2019A).
11. Change Order No. 1 for an increase of \$53,700.00 for Project No. UR-19-A1.
12. Change Order No. 8 for an increase of \$1,050.00 for Project No. FM-15-K1.
13. Task Order No. 1 with Houston Engineering in a not to exceed amount of \$505,000.00 for Project No. FP-19-A0.
14. Payment to KPH in the amount of \$107,200.00 for emergency sanitary sewer repairs.
15. Purchase Agreement with Andrew I. and Nancy C. Froelich for property located at 1422 South River Road South (Project No. FM-15-J3).
16. City of Fargo Specifications Water Mains.
17. Memorandum of Understanding for Use of Facilities in the Event of a Disaster or Emergency with FirstLink.
18. Purchase of Service Agreement with ND Department of Health for Emergency Response Services (CFDA #93.069).
19. Agreement for Services with Center Point Tactical LLC.
20. Memorandum of Understanding and Non-Disclosure Agreement with eSmart Systems US, Inc.
21. Bid award for one articulating utility tractor/mower (PBCT652).
22. Bid award for fuel purchase for 3rd and 4th quarters of 2019 (RFV19007).

23. Change Order No. 5 for a 60-day time extension for Project No. SW16-03 Phase II.
24. Amendment No. 6 for the Hazard Mitigation Grant Program Subgrant Agreement for FEMA-DR-1981-ND Between the ND Department of Emergency Services and the City of Fargo for a 6-month time extension (Project No. WW1402).
25. Task Order No. 24 with AE2S in the amount of \$372,400.00 for the reconditioning of two water towers.
26. Contract for the Newman Outdoor Field – Stadium Reroof Project.
27. Bills.
28. Change Orders for Improvement District No. BR-18-A1:
  - a. No. 1 for an increase of \$23,100.00
  - b. No. 2 for an increase of \$28,160.00
29. Change Order No. 5 for an increase of \$1,124.50 and Interim 3 time extension to 8/12/18 for Improvement District No. BN-17-A1.
30. Change Order No. 1 for a 14-working day time extension for Improvement District No. BN-19-E1.
31. Final Balancing Change Order No. 4 in the amount of -\$16,197.30 for Improvement District No. UN-18-B1.
32. Final Balancing Change Order No. 5 in the amount of \$1,865.00 for Improvement District No. BN-18-K1.
33. Contract and bond for Improvement District No. AN-19-G1.

**REGULAR AGENDA:**

34. Update on the Civic Plaza, Area 1.
35. Public Hearings - 5:15 pm:
  - a. Transfer of a Class "A" Alcoholic Beverage License from Firebox, LLC d/b/a Firebox to International African Restaurant and Nightclub, LLC d/b/a International African Restaurant and Nightclub at 4554 7th Avenue South; denial recommended by the Liquor Control Board; continued from the 7/1/19 and 7/15/19 Regular Meetings.
  - b. Application filed by Crave Hospitality Fargo, LLC d/b/a Crave for a Class "FA" Alcoholic Beverage License to be located at 3902 13th Avenue South #3643.
  - c. CONTINUED to 8/12/19 - Renaissance Zone Project for Great Plains 1001 Holdings, LLC for a new construction project located at 1001 and 1011 Northern Pacific Avenue North; 28 10th Street North; 1016 1st Avenue North and 11 11th Street North; continued from the 7/15/19 Regular Meeting.
  - d. CONTINUED to 8/12/19 - Renaissance Zone Project for DFI Kesler LLC and DFI BJ LLC for a new construction project located at 617 and 621 1st Avenue North, and 624 2nd Avenue North.

- e. CONTINUED to 8/26/19 - Application filed by DFI Kesler, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 624 2nd Avenue North, 621 1st Avenue North and 617 1st Avenue North which the application will use in the operation of leasing residential apartments and commercial space; continued from the 7/15/19 Regular Meeting.
  - f. CONTINUED to 8/26/19 - Application filed by Great Plains 1001 Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1001 NP Avenue, 28 10th Street North, 1016 1st Avenue North and 11 11th Street North which the applicant will use in the operation of leasing of residential apartments and commercial space; continued from the 7/15/19 Regular Meeting.
  - g. CONTINUED to 8/26/19 - Application filed by Great Plains Antique Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1017 4th Avenue North which the application will use in the operation of leasing residential apartments; continued from the 7/15/19 Regular Meeting.
  - h. Renewal Plan for District No. 2019-01 for reconstruction of the alley and utility line relocation within the 100, 200 and 300 Blocks of Roberts Alley in Downtown Fargo.
36. Resolution Authorizing Wireless Telecommunication Facility Guidelines.
- a. Addendum to Master Attachment Agreement for Use of the Right of Way (Encroachment Agreement).
37. Engineering Update.


People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).

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**MEMORANDUM**

**TO:** CITY COMMISSION

**FROM:** NICOLE CRUTCHFIELD, PLANNING DIRECTOR 

**DATE:** JULY 25, 2019

**SUBJECT:** FARGO CIVIC PLAZA, AREA 1 "SODBUSTER LANDSCAPE" UPDATE

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Bishop Land Design (BLD) continues work on the Fargo Civic Plaza for site and landscape design services of the Civic Plaza, Area 1 "Sodbuster Landscape", which was approved by the City Commission on June 17, 2019. Also at that meeting, the Commission approved the solicitation of a Construction Manager at Risk through a request for qualifications (RFQ) using a qualification-based selection process.

As a result of the recent RFQ submittals and interviews, the City Commission approved a contract with McGough on July 15 for preconstruction services. BLD has been coordinating diligently with McGough on design and construction documents over the last two weeks. It is anticipated the Commission will review a guaranteed maximum price (GMP) at a Commission meeting in August for the Area 1 "Sodbuster Landscape".

Scott Bishop and his team will be in Fargo early next week, and will present an update on the schedule and design for the Fargo Civic Plaza, Area 1 "Sodbuster Landscape" as well as the concept design of the remainder of the Civic Plaza area.

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**AUDITOR'S OFFICE**

Fargo City Hall  
225 4th Street North  
PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

[www.FargoND.gov](http://www.FargoND.gov)

**MEMORANDUM**

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – International African Restaurant & Nightclub

DATE: July 19, 2019

The following application to transfer a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: A Full Alcohol, no food sales required  
Business Name: International African Restaurant and Nightclub  
Location: 4554 7<sup>th</sup> Avenue South  
Applicants: Francis Brown (Removed per request 6/25/19) Mballu Brown & Corey Schultz

Corey Schultz has a criminal felony conviction from 2004 for Delivery of a Controlled Substance. Mballu Brown has no criminal history concerns, however, she has a poor credit history with 2 personal loans with unpaid balances in excess of \$15,000 and 3 credit accounts with unpaid balances. The Brown's own and operate the Liberian Merry Go Round restaurant, the business is currently in arrears on its utility bill with the City of Fargo.

The Liquor License Application Guidelines (City Commission approved Resolution attached) list among other considerations that applicants credit must be in good standing. Additionally, the Guidelines state the applicant must not have any outstanding obligation with the City of Fargo.

On a 4 to 1 split vote the Liquor Control Board voted to DENY the transfer of the license from Firebox, LLC d/b/a Firebox to International African Restaurant and Nightclub LLC d/b/a International African Restaurant and Nightclub. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to DENY the transfer of a Class A alcoholic beverage license from Firebox, LLC d/b/a Firebox to International African Restaurant and Nightclub LLC d/b/a International African Restaurant and Nightclub based on City established guidelines.**

## MEMORANDUM

**TO:** Chief David Todd

**FROM:** Sergeant Matt Christensen

**DATE:** July 16<sup>th</sup>, 2019

**SUBJECT:** Application for transfer of a Class "A" Alcoholic Beverage License from Firebox, LLC d/b/a: Firebox, to International African Restaurant and Nightclub, LLC d/b/a International African Restaurant and Nightclub, to be located at 4554 7<sup>th</sup> Avenue South, Fargo, ND.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement in any state.

The following information was discovered through this investigation:

**Mballu Brown – Owner**

Criminal History- No areas of concern

Credit History- 565 Current Credit Score:

- up from **561** on initial credit check on 7/3/2019
- Two personal loans that had an unpaid balance and were closed and reported as a loss
  - One with a balance of **\$5,889**
    - \$8,997 original amount of loan opened in April 2015
  - One with a balance of **\$10,036**
    - \$10,000 original amount of loan opened in May 2012
- 3 Credit accounts had an unpaid balance and were closed and reported as a loss
  - One with a balance of \$967
    - Credit Limit of \$750 opened in April 2009
  - One with a balance of \$962
    - Credit Limit of \$1,200 opened in May 2013

- One with a balance of \$916
  - Credit Limit of \$1,000 opened in December 2014
- Two accounts were in Collections and seriously past due
  - \$480 Comenity Capital Bank original creditor
    - This has since had a payment made on 7/5/2019 and has a new balance of \$129
  - \$381 Comcast Cable Communications original creditor
    - This was paid on 7/10/2019 and is now current with a \$0 balance

Corey Schultz – Owner

|                   |            |                                                                                                                                                      |
|-------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Criminal History- | June 2004- | Pled Guilty to Delivery of a Controlled Substance (Cass County ND) A Felony -3 years in jail with 2 suspended, supervised Probation and \$1,000 fine |
|-------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------|

|                 |                     |
|-----------------|---------------------|
| Credit History- | No areas of concern |
|-----------------|---------------------|

Investigation Notes

This application is for the transfer of a class “A” Alcoholic Beverage License which allows the licensee to sell alcohol “on-sale” only. The business will be a bar and restaurant atmosphere. The business hours will be 10am to 2am, however the restaurant portion will close at 10pm and the bar will then open between the hours of 10pm and 2am.

This application is a new application with a new owner listed from a previous application. Mballu Brown is requesting to be the applicant in place of her husband, Francis Brown, who was the applicant from the previous request. During the investigation it was found that Brown had several credit issues with accounts in collections or that had to be reported as a loss from failure to pay. I spoke with Brown about these and she has made attempts to rectify the accounts in question. To date, Ms. Brown does still have one account referred to collections with a balance of \$129, after making a payment and reducing the balance from \$480. The other account she has paid in full.



Ms. Brown is clearly taking on this role at the direction of her husband and previous applicant, Francis Brown. During my conversation with Ms. Brown, she told me her husband told her she may have to meet with the City Commission to discuss the application and the liquor license usage. Ms. Brown was very pleasant to deal with, however her credit history does raise some concern about how this business will be run financially.

### **Business Location**

International African Restaurant and Night Club will be located at 4554 7<sup>th</sup> Avenue South, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Super Buffet & Mongolian Grill, Gorkha Palace, and Passage to India.

### **Conclusion**

I believe I have discovered all information related to the listed applicant(s) and all information related to the issuance of the requested liquor license. I have provided this completed background investigation to Fargo Police Chief David Todd for his review and recommendation.



A-3

## APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

Company name (LLC, Inc): International African Restaurant and Nightclub LLCDoing business as: International African Restaurant and Nightclub LLCBusiness address (location): 4554 7th Ave S, Fargo, ND 58103Mailing address: 4554 7th Ave S, Fargo, ND 58103Business e-mail address: brownfb1973@gmail.comPhone number: ( 215 ) 909-1946 Other number: (      )                     The following section to be completed by City Staff:Date Received by Auditor's Office: 5/3/19Investigations Fee Paid (\$250) ☒ Yes ☐ No Date Paid: 5/3/19 Check # 1185Reviewed – Police Department by:                                      Date:                     

Comments (or see attached report):

           Approval RecommendationX Denial RecommendationFELONY CONVICTIONS FOR  
BOTH APPLICANTS LT

Chief of Police

06/12/19

Date

Reviewed – Liquor Control Committee on (date):                                                Approval Recommendation  
(See attached comments or minutes)           Denial RecommendationReviewed – City Commission on (date):                                                Approval           Denial



CONMY ♦ FESTE  
Attorneys

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**CONMY FESTE LTD.**

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National Board of Trial Advocacy

May 7, 2019

Via Email (ssprague@fargond.gov)

Steve Sprague  
City of Fargo  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: Firebox, LLC  
503 7<sup>th</sup> Street North  
Fargo, ND 58102  
Class A Alcoholic Beverage License No. 10

Dear Mr. Sprague:

Firebox, LLC is the owner of City of Fargo Class A Alcoholic Beverage License No. 10 (the "License"). Firebox, LLC has entered into an agreement to transfer the License to International African Restaurant and Nightclub, LLC (the "Buyer"). I understand the Buyer is owned by Francis Brown and Cory Schultz.

If you have any questions or need anything further, please contact me.

Sincerely,

Douglas Murch



City of Fargo – Auditor's Office  
Licensing Department  
225 4th Street North  
Fargo, ND 58102

**Re: License Application for International African Restaurant and Nightclub LLC**

Dear Sir/Madam:

Please find enclosed the application for a Class A alcoholic beverage license for International African Restaurant and Nightclub LLC. This application relates to a proposed transfer of an existing Class A license from Firebox LLC to International African Restaurant and Nightclub LLC. A representative for Firebox LLC should be contacting you regarding this transfer as well.

If you have any questions about the application or require any additional information please don't hesitate to contact me. You may reach me at 701-353-7101.

Sincerely,

Stephen J. Baird

Attorney for International African Restaurant and Nightclub LLC

## **At a Meeting of Members of International African Restaurant and Nightclub LLC**

On June 25, 2019 and by unanimous consent of all members it is agreed that:

The transfer of Francis Brown's ownership interest to his wife, Mballu Brown, is accepted and she is to be considered a member of the LLC in good standing with all the rights and responsibilities accorded to her under the Membership and Control Agreement of the LLC.

It is further agreed that effective on this date Francis Brown will be removed as the Manager of International African Restaurant and Nightclub LLC and that Mballu Brown will be appointed to be the new Manager of the LLC.



Francis Brown – Manager/Owner

06-25-19

Date



Corey Schultz – Owner

June 25, 2019

Date

**The following section to be completed by the applicant:**

**ALL APPLICANTS** must initial #1 - #9 and sign in the space provided below.

1. \_\_\_\_\_ All applicants must assure there is adequate off-street parking for my business (within the direction of and as approved by the City Commission). Membership in the current City parking program (e.g. "P.O.P") may place me in compliance with this requirement.
2. \_\_\_\_\_ I have received a copy of the Alcoholic Beverage Ordinance(s) of the City of Fargo, read the ordinances and am familiar with the conditions and requirements of these ordinances.
3. \_\_\_\_\_ If granted an alcoholic beverage license, I will obey, abide by and comply with the State of North Dakota Liquor Control Act, and the City of Fargo Alcoholic Beverage ordinances, as well as any amendments to either of these, which may be made from time to time.
4. \_\_\_\_\_ I understand either, I, my manager(s), or both of us must attend a yearly meeting (date and time to be announced) with representatives from the Police and Health departments to discuss law enforcement and safety concerns as a condition of license renewal.
5. \_\_\_\_\_ I understand that the premises described in the application, if licensed for alcoholic beverage sales, may be inspected at any time by the Chief of Police, or any officer of the Police or Health Departments as allowed by city ordinances and state law. My employees and I will cooperate with such inspections.
6. \_\_\_\_\_ I understand that all employees, managers and owners engaged in mixing, pouring or service of alcoholic beverages **MUST** attend Server Training.
7. \_\_\_\_\_ I am familiar with the question, answers and other information as it appears in the complete application of an alcoholic beverage license, and the answers and information are, to the best of my belief and knowledge, true, complete and accurate. (Note: This application must be made under oath before a Notary Public.)
8. \_\_\_\_\_ I recognize the City of Fargo is subject to open records laws contained in chapter 44-04 of the N.D. Century Code. Section 44-04-18.4 contains an exception for trade secrets, proprietary, commercial, and financial information. I agree in submitting the application, that I have familiarized myself with this law. If any information being forwarded to the City of Fargo is claimed as confidential or proprietary under this section, I must clearly indicate this in writing when I submit this application, pointing out, in detail, why the information submitted is claimed as an exemption under section 44-04-18.4. I further agree to respond to, as well as to aid the City, in responding to any claim under 44-04-21.1 concerning this claim of confidentiality under 44-04-18.4.
9. \_\_\_\_\_ I understand that **the license will expire on June 30 of each year** and a renewal process will need to be completed. This process will include a completed renewal application, payment in full for the required annual fee, a completed roster for each employee who pours or serves alcohol, attendance of Server Training for those listed on the roster, and a copy of your certified food sales if applicable to your license.

Applicant printed name: Mballu Brown Signature: 

Applicant printed name: \_\_\_\_\_ Signature: \_\_\_\_\_

Applicant printed name: \_\_\_\_\_ Signature: \_\_\_\_\_

Applicant Information: (2 pages)

Name: Mbailu Brown  
 (first) (middle) (last) (maiden name)

Address: 4735 38th Ave S Fargo ND 58104  
 (address) (city) (state & zip)

How long have you lived at this address? Three years

Provide your address history for the past 5 years:

From 05/01/2010 to 2/22/16 Address: 8516 36rd Ave N Apt 305 Brooklyn Park MN 55428

From \_\_\_\_\_ to \_\_\_\_\_ Address: \_\_\_\_\_

E-mail address: brownfb1973@gmail.com

Home phone number: (763) 516-4849 Other number: (\_\_\_\_) \_\_\_\_\_

Date of Birth: 10/03/1974 Place of Birth: Monrovia, Liberia

List each driver's license you have ever had and the state of issue:

DL#: Q537178706515 State of Issue: MN Dates: 6-2016

DL#: \_\_\_\_\_ State of Issue: \_\_\_\_\_ Dates: \_\_\_\_\_

Has your driver's license ever been suspended or revoked? \_\_\_\_\_ Yes x No If "yes," where and when.

If "yes," have you ever been issued a citation for driving after your license was suspended or revoked?

\_\_\_\_\_ Yes \_\_\_\_\_ No If "yes," where and when?

Have you ever been convicted, plead guilty, or plead "no contest" to any law of the U.S., or any state, or of any local ordinance (other than traffic)? (DUI **should not** be considered a "traffic offense" – and therefore must be listed) \_\_\_\_\_ Yes X No

If "yes", provide the date of arrest, location, charge, and sentence of each conviction.

Have you been issued a citation for any alcohol-related offense? \_\_\_\_\_ Yes x No

If "yes", provide the date of arrest, location, charge of each conviction.

List all federal, state, and local licenses (including liquor licenses; excluding driver's licenses) you currently hold, formerly held, or may have an interest in:

Certified Nursing Assistant license - ND and MN

Have any of the above named licenses ever been suspended or revoked? ☐ Yes ☒ No

If "yes", list the dates and reasons for the suspensions or revocations:

List your employment/business history for the past 7-year period:

From: 2018 to Present Business name: mentor network

Address: 2111 19th St Moorhead MN Position/Title: DSP

From: 12/01/2017 to                      Business name: Lilac Homes

Address: 2615 Park View Drive, Moorhead, MN 56560 Position/Title: CNA

From: 06/01/2010 to 12/02/2017 Business name: Augustana Care Thomas Feeney Manor

Address: 904 4th Ave N, Minneapolis, MN 55405 Position/Title: CNA

Do you currently own or have a financial interest in any other business that sells or serves alcoholic beverages?

☐ Yes ☒ No If "yes", list each business below:

Have you ever manufactured, sold, or distributed alcoholic beverages on the wholesale or retail level?

☐ Yes ☒ No If "yes", indicate where, when, and for whom below:

Do you have any current or prior management experience working for a business that sells or serves alcohol?

☐ Yes ☒ No If "yes", describe below:

Make copies as needed for each shareholder/partner with 5% or greater interest in the company.





Office of the City Attorney

City Attorney  
Erik R. Johnson

Assistant City Attorney  
Nancy J. Morris

February 22, 2018

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Board of City Commissioners  
City Hall  
200 North Third Street  
Fargo, ND 58102

Dear Commissioners:

I am enclosing a Resolution Establishing License Application Qualification Guidelines for parties applying for a liquor license. The Liquor Control Board discussed this License Application Qualification Guideline at its meeting in January, and put it out for public comment and review for further consideration at its meeting on February 21, 2018. The Liquor Control Board is recommending the adoption of the Resolution.

**Recommended Motion:** I move to approve the Resolution Establishing License Application Qualification Guidelines.

Sincerely,

Nancy J. Morris  
JAR

Nancy J. Morris

Enclosure



COMMISSIONER Gehrig introduced the following resolution and moved its adoption:

RESOLUTION ESTABLISHING LICENSE APPLICATION QUALIFICATION  
GUIDELINES

WHEREAS, the City of Fargo has enacted Article 25-15 of the Fargo Municipal Code for the purposes of licensing retail liquor in the city of Fargo; and

WHEREAS, Section 25-1505 of the Fargo Municipal Code mandates the Police Chief investigate the applicant, including the character, reputation, and fitness of the applicant to hold a license, and make a recommendation to the Board of City Commissioners as to whether or not a license should be granted under this Article; and

WHEREAS, the Board of City Commission of the City of Fargo desires to establish guidelines for purposes of considering the character, reputation, and fitness of an applicant for a license pursuant to Article 25-15.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS,

1. Applicant may not have had revoked, in the previous 5 years, any license for the sale of alcoholic beverages.
2. Property taxes and special assessments for the building in which the licensed premises are located may not be delinquent.
3. Applicant may not be in default on any obligation owed to the city of Fargo.
4. Applicant may not have sought any form of Bankruptcy protection within the past 5 years.
5. Applicant's credit must be in good standing. Applicant must not have any outstanding/unsatisfied civil or criminal judgments, including restitution judgments.
6. Applicant must be identified as in Good Standing with the North Dakota Secretary of State and the North Dakota Attorney General's Office.
7. Any false statement in the application process shall result in automatic refusal of the license application, or immediate withdrawal of prior issuance.
8. Applicant and/or manager may not have been convicted of any of the following offenses within the previous five (5) years, or if the applicant is not otherwise considered rehabilitated within the meaning of NDCC 12.1-33-02.1, or the offense has a direct bearing on the owner or manager's ability to serve the public in a liquor business:

- a. A felony;
- b. Conviction of an offense involving the manufacture, sale, distribution or possession of alcoholic beverages;
- c. Forfeiture of a bond or failure to appear in court pursuant to court order;
- d. Conviction of an offense involving the sale or felony possession of drugs;
- e. Conviction of any offense of Domestic Violence, Child Endangerment, or Sexual Assault;
- f. Conviction of a Prostitution offense;
- g. Conviction of an Obscenity or Pornography offense.

In the application of this section, it shall be presumed that a violation of paragraphs 7 (b), 7 (d-g) has a direct bearing on the applicant's ability to serve alcoholic beverages to the public.


9. Applicant must not have two (2) or more convictions in the two (2) years immediately prior to the application of the following offenses:
- a. Actual physical control of a motor vehicle while under the influence of alcohol or drugs;
  - b. Minor in possession of alcohol;
  - c. Sale or delivery of alcohol to a minor;
  - d. Consuming in public.
10. Any other offense determined by the Board of City Commission to have a direct bearing on the applicant's or manager's ability to serve alcoholic beverages, and in the protection of the public interests.
11. Pending charges of either a felony or misdemeanor in any jurisdiction will result in the application being held until disposition of the charges, at which time the application will be considered in accordance with the foregoing criteria. Applications will be processed as they are received, and applications held for pending charges will be withdrawn from queue until fully reviewable.

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER Grindberg, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS Gehrig, Grindberg, Piepkorn, Strand, Mahoney The following were absent

and not voting: none, and the following voted against the same: none,  
whereupon the resolution was declared duly passed and adopted.

  
Timothy J. Mahoney, Mayor

ATTEST:

  
Steve Sprague, City Auditor

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**AUDITOR'S OFFICE**

Fargo City Hall  
225 4th Street North  
PO Box 2471

Fargo, ND 58108

Phone: 701.241.8108 | Fax: 701.241.8184

[www.FargoND.gov](http://www.FargoND.gov)

**MEMORANDUM**

---

TO: Board of City Commissioners  
FROM: Steven Sprague, City Auditor  
SUBJECT: Liquor License Application – Crave  
DATE: May 15, 2019

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: FA Full alcohol, food sales must exceed alcohol sales, bar allowed  
Business Name: Crave  
Location: 3902 13<sup>th</sup> Ave S (West Acres)  
Applicants: Kayvan Talebi, Kamran Talebi, Joseph Brown

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class FA alcoholic beverage license to Crave Hospitality Fargo, LLC d/b/a Crave. The complete application is available for review in the Auditor's Office.

**Recommended Motion:**

**Move to approve the issuance of a Class FA alcoholic beverage license to Crave Hospitality Fargo LLC d/b/a Crave.**

## MEMORANDUM

**TO:** Chief David Todd

**FROM:** Sergeant Matt Christensen

**DATE:** July 16<sup>th</sup>, 2019

**SUBJECT:** Application for a Class "FA" Alcoholic Beverage License for Crave Hospitality Fargo, LLC d/b/a: Crave to be located at 3902 13<sup>th</sup> Avenue South, Fargo, ND.

Per City Auditor Steve Sprague, this is only a transfer of use and location of a currently existing liquor license of existing owners that does not require a background investigation done.

### Keyvan Talebi- Owner

Criminal History- No areas of concern

Credit History- No areas of concern

### Kamran Talebi- Owner

Criminal History- No areas of concern

Credit History- No areas of concern

### Joseph Brown- Manager

Criminal History- No areas of concern

Credit History- No areas of concern

### Investigation

This application is for a new FA license for a restaurant set to open in the West Acres mall which will serve American cuisine as well as fresh sushi. This will be a new stand-alone restaurant set in the mall at West Acres. Through my investigation I did not find any issues with the character of the applicants or any indicators that would lead me to believe granting them a liquor license would lead to any problems.

**Business Location**

Crave will be located in West Acres mall at 3902 13<sup>th</sup> Avenue South, Fargo. Other businesses in the area with an alcoholic beverage license include: Chili's, Holiday Inn, Buffalo Wild Wings, Granite City, Delta Hotels, and Blaze Pizza.

**Conclusion**

I believe I have discovered all information related to the listed applicant(s) and all information related to the transfer of the requested liquor license. I have provided this condensed background review to Fargo Police Chief David Todd for his review and recommendation.



35h

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: JIM GILMOUR, STRATIGIC PLANNING DIRECTOR**

**DATE: JULY 25, 2019**

**SUBJECT: RENEWAL PLAN – ROBERTS ALLEY**

A handwritten signature in black ink, appearing to be "JG", located to the right of the "FROM:" line.

I prepared a Renewal Plan for the paving and the relocation of utility lines in Roberts Alley. The renewal plan is needed to provide legal authority to use city funds on some of the costs associated with relocation of the power lines.

The Renewal Plan is attached for your review, along with a resolution to adopt the plan. A public hearing is part of the review and approval process of the Renewal Plan, and it is scheduled for the July 29, 2019 City Commission meeting.

The plan designates this area as appropriate for redevelopment and provides a general plan for redevelopment. Unlike most renewal plans, this plan does not create a Tax Increment Financing (TIF) District. Adoption of the plan will allow the City to move forward with paying for costs needed to relocate utility lines.

The Planning Commission reviewed the Renewal Plan and determined it is consistent with the GO2030 Comprehensive Plan for Fargo.

**RECOMMENDED MOTION:**

Approve the Resolution adopting Renewal Plan 2019-01 for the redevelopment of two blocks with Roberts Alley.

Attachments



RESOLUTION  
BOARD OF CITY COMMISSIONERS OF THE  
CITY OF FARGO

DISTRICT NO. 2019-01

Commissioner \_\_\_\_\_ moved for approval of the following:

WHEREAS, Certain areas within the City are in need of redevelopment in order to prevent further deterioration, to encourage investment and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

1. That one or more slum or blighted areas, or areas consisting of industrial or commercial property, or a combination of those areas of properties, exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment, or a combination thereof, of the area contained within the Renewal Plan for District No. 2019-01, is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo and will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the rehabilitation or redevelopment of the development area.
3. That there are properties within the area contained within the Renewal Plan with deteriorated conditions, and other conditions existing that discourage redevelopment. The Renewal Area, as defined in the Renewal Plan, is blighted due to the presence of these properties and conditions have substantially impaired the growth of the City, and have slowed the provision of appropriate redevelopment in this area. As a result, the Board of City Commissioners finds that a blighted condition exists in the said area.
4. That there are no persons living in residential buildings who will be displaced by the redevelopment.
5. That the area designated as the Renewal Plan for District No. 2019-01 is appropriate for development projects.
6. That such development, rehabilitation, conservation or redevelopment of the area contained in the Renewal Plan for District No. 2019-01 requires the powers and authority granted in Chapter 40-58 NDCC.

**RENEWAL PLAN**

**DISTRICT NO. 2019-01**

**CITY OF FARGO, NORTH DAKOTA**

**June, 2019**

**RENEWAL PLAN FOR DISTRICT NO. 2019-01**

|                 |                                    |
|-----------------|------------------------------------|
| SUBSECTION 1.1. | DEFINITIONS                        |
| SUBSECTION 1.2. | STATUTORY AUTHORITY                |
| SUBSECTION 1.3. | STATEMENT OF PUBLIC PURPOSE        |
| SUBSECTION 1.4. | DESCRIPTION OF THE DISTRICT        |
| SUBSECTION 1.5. | PROJECT DEVELOPMENT                |
| SUBSECTION 1.6. | LAND USE ATTRIBUTES                |
| SUBSECTION 1.7. | ESTIMATE OF DEVELOPMENT COSTS      |
| SUBSECTION 1.8. | ESTIMATE OF BONDED INDEBTEDNESS    |
| SUBSECTION 1.9. | IMPACT OF PLAN                     |
| APPENDIX A:     | MAP OF THE DISTRICT                |
| APPENDIX B:     | LIST OF PROPERTIES IN THE DISTRICT |

**RENEWAL PLAN FOR DISTRICT NO. 2019-01**

Subsection 1.1. Definitions

For the purpose of the Renewal Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

“City” means the City of Fargo, a municipal corporation under the laws of the State of North Dakota.

“City Commission” or “Commissions” means the Fargo City Commission.

“Comprehensive Plan” means the City’s GO2030 Comprehensive Plans, including the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservations for all lands and water within the City as and when such plan is adopted and finalized.

“County” means Cass County, North Dakota.

“Development” means the construction of new buildings, structures or improvements; the demolitions, alterations, remodeling, repair or reconstructions of existing buildings, structures or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in the Renewal Area.

“Renewal Area” means the property described in Subsections 1.4 of this Plan.

“Renewal Plan” or “Plan” means this Plan adopted by the Commission for the Renewal Area.

“Tax Increment Bonds” means any general obligation or revenue tax increment bonds or notes issued by the City to finance the public costs associated with the Plan, or any obligations issued to refund the Bonds.

“Urban Renewal Law” means North Dakota Century Code, Chapter 40-58.

Subsection 1.2. Statutory Authority

The creation of the Renewal Area is authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or blighted area, or combination of these properties as appropriate for a development or renewal project.

The Urban Renewal Law provides that communities develop a “workable program” for the use of public and private resources to facilitate the development of industrial or commercial properties,

eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slums and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. North Dakota Century Code, Section 40-58-04.

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan No. 2019-01, the City Commission intends to make the following findings:

- (a) The Renewal Area includes a blighted area  
**Factual basis:** The Renewal Area is blighted due to the presence of underutilized land, a deteriorating alley and large overhead power lines.
- (b) The Renewal Area includes industrial or commercial property.  
**Factual basis:** The Renewal Area contains commercial land uses.
- (c) The Renewal Area is appropriate for a development or renewal project.  
**Factual basis:** Some properties within the area are underdeveloped for the location. These two blocks are in the core of the downtown. Redevelopment of the area will allow for higher density without the need to install additional infrastructure.
- (d) Comparable replacement dwellings or housing is available to persons displaced by the proposed project.  
**Factual basis:** No replacement housing required. Redevelopment will not eliminate housing, but instead create new housing.
- (e) The Plan conforms to the Comprehensive Policy Plan for the City as a whole.  
**Factual basis:** Redevelopment in this Renewal Area is consistent with the goals that are embodied in the Go2030 Comprehensive Plan and the Downtown Plan.

Subsection 1.4. Description of the District

The Renewal District is located on the core of the downtown. A map of the boundaries of the District is attached hereto as Appendix A. The properties are zoned DMU (Downtown Mixed Use). Appendix B is a list of the properties in the district.

District No. 2019-01 encompasses two (2) blocks. There is a mix of land uses on the blocks, including housing, offices, commercial space and parking. The main floor space along Broadway, 1<sup>st</sup>

Avenue North and 2<sup>nd</sup> Ave North is primarily retail. Housing is more prevalent along Roberts Street. Upper floors on both blocks are generally offices and housing.

The Fargo Theatre and a city parking garage are located on the northerly block.

#### Subsection 1.5. Project Development, Alley Paving, and Utility Lines

The Development of the Renewal Area includes the following activities:

Alley Paving – Roberts Alley on the southerly block will be reconstructed. This reconstruction will include conduit to allow for the relocation of overhead power lines. The alley on the northerly block were recently reconstructed, along with conduit for utilities.

Relocation of Utilities – Implementation of this plan is to relocate overhead utility lines to conduit under the alley. Work will include both power and telecommunication lines. Electrical line relocation will require modifications to internal electrical systems in some buildings.

#### Subsection 1.6. Land Use Attributes

- (a) Zoning or Planning Changes. The properties are zoned DMU (Downtown Mixed Use). Future development will conform to the DMU standards and zoning changes are not needed.
- (b) Maximum Densities. The DMU zoning district allows 100% building coverage on lot with no setbacks and height restrictions.
- (c) Building Requirements. All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.

#### Subsection 1.7. Estimate of Development Costs

Development costs include:

|                                          |             |
|------------------------------------------|-------------|
| Alley Reconstruction                     | \$464,306   |
| Power and Telecommunication Line Burying | \$2,255,874 |

Alley Reconstruction costs will be special assessed to adjacent property owners.

Utility line burying costs will be from Xcel, Kilbourne Group properties and the City of Fargo. The financial plan includes \$500,000 from Xcel, \$844,209 from Kilbourne Group properties and \$911,665 from the City of Fargo.

Subsection 1.8. Estimate of Bonded Indebtedness

Costs to reconstruct the alleys will be special assessed to the adjoining property owners. Special assessment bonds would provide the funds, with annual special assessments to property owners. The City does not plan to bond for the costs of utility line relocations.

Subsection 1.9. Impact of Plan

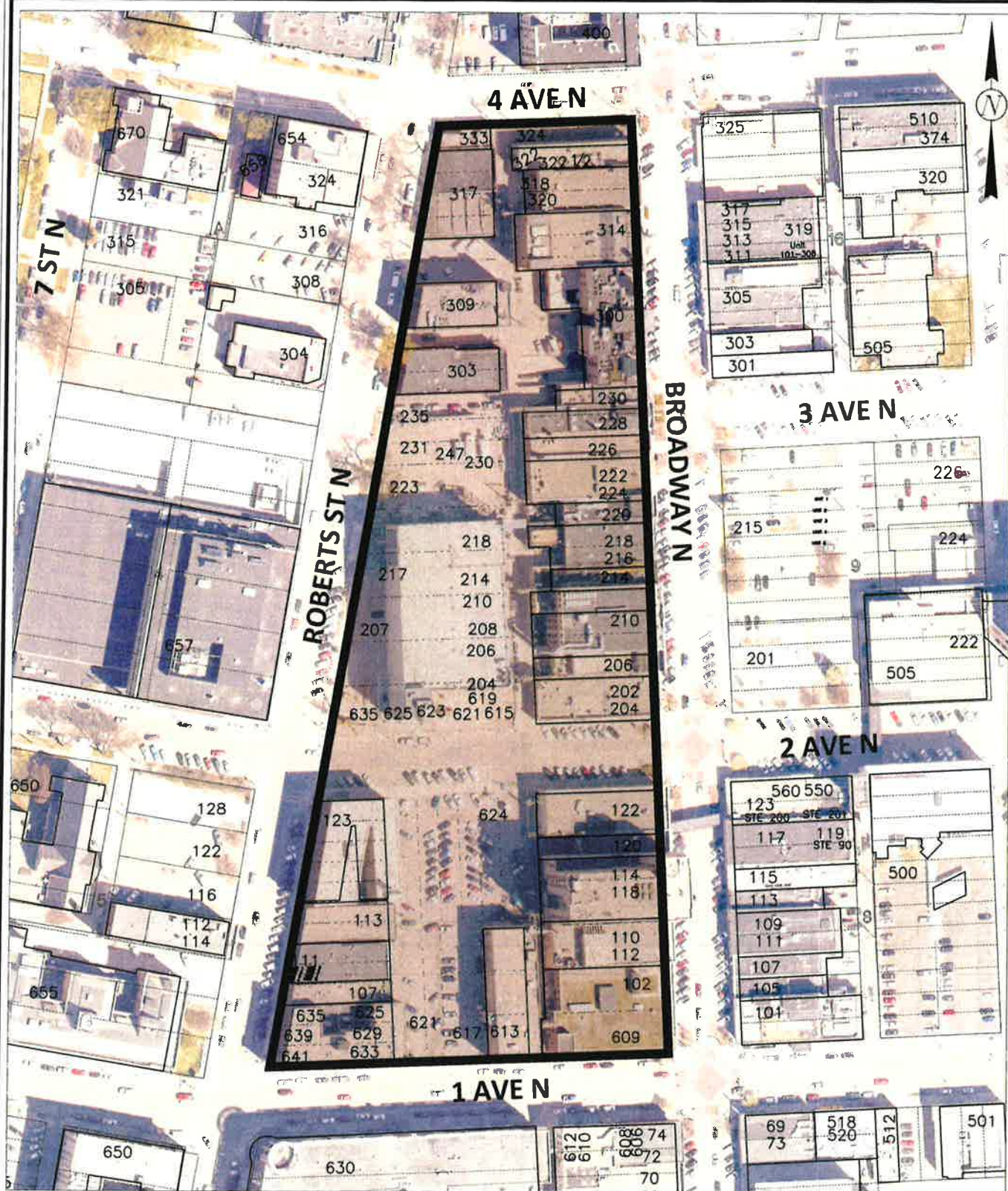
Implementation of the plan will eliminate blighted conditions and encourage new development on surface parking lots and vacant land.

Removal of the overhead utility lines will remove a blighted condition on both blocks. The goal is to attract more businesses to alley locations, and create a pedestrian friendly environment that will draw customers to those businesses. Alley paving on the northerly block is partially completed, and will be finished in 2019. The pavement in the alley on the southerly block is in very poor condition and needs reconstruction, which will include installation of conduit for utility lines and make it a walkable space.

Utility line relocation is vital to the development of vacant property adjacent to Roberts Alley. The utility poles prevent full use of the vacant land adjacent to the alley. Relocation of the utility lines will encourage better development of the vacant land on the southerly block.

APPENDIX A  
MAP OF THE DISTRICT





CITY OF FARGO  
ENGINEERING DEPARTMENT  
RENEWAL DISTRICT

APPENDIX B

LIST OF PROPETIES IN THE DISTRICT

| <u>Owner</u>                                           | <u>Property Address</u> |
|--------------------------------------------------------|-------------------------|
| DFI 102 BROADWAY LLC                                   | 102 BROADWAY N          |
| DFI BLACK BUILDING LLC                                 | 110 BROADWAY N          |
| DFI BLACK BUILDING LLC                                 | 114 BROADWAY N          |
| WALTON CHIROPRACTIC CLINIC PC                          | 120 BROADWAY N          |
| DFI BD LLC                                             | 122 BROADWAY N          |
| C/D DFI BG LLC                                         | 617 1 AVE N             |
| C/D DFI BG LLC                                         | 613 1 AVE N             |
| DFI KESLER LLC                                         | 624 2 AVE N             |
| THE GRAVER LP                                          | 123 ROBERTS ST N        |
| THE GRAVER LP                                          | 123 ROBERTS ST N        |
| WINDERS, JOHNSON, & YOUNG LLC                          | 113 ROBERTS ST N        |
| NICKEL PARTNERS LLP                                    | 107 ROBERTS ST N        |
| DAKOTAH PIONEER LTD PTSHP                              | 625-641 1 AVE N         |
| DAKOTAH PIONEER LTD PTSHP                              | 625-641 1 AVE N         |
| DFI BJ LLC                                             | 621 1 AVE N             |
| VFW CLUB OF FARGO                                      | 202 BROADWAY N          |
| OELUCK INC                                             | 206 BROADWAY N          |
| LORETTA LLC                                            | 210 BROADWAY N          |
| LORETTA LLC                                            | 212 BROADWAY N          |
| HANSON PROPERTIES LLC                                  | 214 BROADWAY N          |
| HATCH & YOUNG LLC                                      | 216 BROADWAY N          |
| HOUSING & REDEVELOPMENT AUTHORITY OF THE CITY OF FARGO | 220 BROADWAY N          |
| HOUSING & REDEVELOPMENT AUTHORITY OF THE CITY OF FARGO | 220 BROADWAY N          |
| BANNER LLC                                             | 222 BROADWAY N          |
| DFI DILLARD LLC                                        | 247 ROBERTS ST N        |
| DFI DILLARD LLC                                        | 223 ROBERTS ST N        |
| DFI DILLARD LLC                                        | 227 ROBERTS ST N        |
| DFI DILLARD LLC                                        | 231 ROBERTS ST N        |
| DFI DILLARD LLC                                        | 235 ROBERTS ST N        |
| DFI DILLARD LLC                                        | 230 ROBERTS ALY N       |
| THREE STAR INVESTORS LLC                               | 226 BROADWAY N          |
| C/D AML HOLDINGS LLC                                   | 228 BROADWAY N          |
| EHLEN, PHYLLIS E                                       | 230 BROADWAY N          |
| FARGO THEATRE MANAGEMENT CORP                          | 314 BROADWAY N          |
| WARNER INVESTMENT CORP                                 | 318 BROADWAY N          |
| CENTRAL BILLING INC                                    | 322 BROADWAY N          |
| CENTRAL BILLING INC                                    | 324 BROADWAY N          |
| ROBERTS STREET CHAPEL LLC                              | 333 ROBERTS ST N        |
| FLOORING PROPERTIES II, LLP                            | 317 ROBERTS ST N        |
| DFI SMITH FOLLETT & CROWL LLC                          | 309 ROBERTS ST N        |
| DFI SMITH FOLLETT & CROWL LLC                          | 309 ROBERTS ST N        |
| HOUSING & REDEVELOPMENT AUTHORITY OF THE CITY OF FARGO | 303 ROBERTS ST N        |
| HOUSING & REDEVELOPMENT AUTHORITY OF THE CITY OF FARGO | 303 ROBERTS ST N        |
| PORTERFIELD LLC                                        | 109 ROBERTS ST N UNIT 5 |
| HATCH & YOUNG LLC                                      | 111 ROBERTS ST N UNIT 8 |
| HATCH & YOUNG LLC                                      | 111 ROBERTS ST N UNIT 7 |
| HATCH & YOUNG LLC                                      | 111 ROBERTS ST N UNIT 6 |
| PORTERFIELD LLC                                        | 109 ROBERTS ST N UNIT 4 |
| YOUNG, ANDREW J                                        | 111 ROBERTS ST N UNIT 3 |
| SAMUELSON, LISA J                                      | 111 ROBERTS ST N UNIT 2 |
| YOUNG, THAN J & CHARLOTTE M                            | 111 ROBERTS ST N UNIT 1 |

| <u>Owner</u>                       | <u>Property Address</u> |
|------------------------------------|-------------------------|
| DFI ROBERTS LLC                    | 625 2 AVE N             |
| DFI ROBERTS LLC                    | 207 ROBERTS ST N        |
| DFI ROBERTS LLC                    | 655 2 AVE N             |
| DFI ROBERTS LLC                    | 623 2 AVE N             |
| DFI ROBERTS LLC                    | 621 2 AVE N             |
| DFI ROBERTS LLC                    | 615 2 AVE N             |
| DFI ROBERTS LLC                    | 204 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 206 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 208 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 210 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 214 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 218 ROBERTS ALY N       |
| DFI ROBERTS LLC                    | 619 2 AVE N             |
| DFI ROBERTS LLC                    | 635 2 AVE N             |
| CITY OF FARGO                      | 217 ROBERTS ST N        |
| MOLBERT, LAURIS N T/O/D            | 300 BROADWAY N UNIT 301 |
| BURGUM, DOUGLAS J                  | 300 BROADWAY N UNIT 404 |
| WEINGARTEN, BENJAMIN J             | 300 BROADWAY N UNIT P1  |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT 104 |
| WEINGARTEN, BENJAMIN J             | 300 BROADWAY N UNIT 304 |
| MOLBERT, LAURIS N TRUST            | 300 BROADWAY N UNIT P2  |
| CHRISTIANSON, SANDRA V             | 300 BROADWAY N UNIT 201 |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT P5  |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT 101 |
| KNUTSON, CAMERON M                 | 300 BROADWAY N UNIT 405 |
| C/D FARGO THEATRE MANAGEMENT (THE) | 300 BROADWAY N UNIT 105 |
| ORMBRECK, HARLAN & SHARON          | 300 BROADWAY N UNIT P3  |
| WHITE, DAVID H & THERESE A         | 300 BROADWAY N UNIT 305 |
| COURSEY, RICHARD L JR              | 300 BROADWAY N UNIT P4  |
| ORMBRECK, HARLAN & SHARON          | 300 BROADWAY N UNIT 203 |
| JOHNSON, TERRY D                   | 300 BROADWAY N UNIT 406 |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT P6  |
| SCHWERT, DONALD P T/O/D            | 300 BROADWAY N UNIT 204 |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT P7  |
| KERBER, BEVERLY D                  | 300 BROADWAY N UNIT 205 |
| KOLSTAD, MARK A & SUSAN O          | 300 BROADWAY N UNIT 303 |
| STARK, CHAD W & JENNIFER A         | 300 BROADWAY N UNIT 401 |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT 102 |
| DFI 300 BROADWAY LLC               | 300 BROADWAY N UNIT 103 |
| SAWARDEKER, PRASAD J               | 300 BROADWAY N UNIT 202 |
| COURSEY, RICHARD L JR              | 300 BROADWAY N UNIT 306 |



July 25, 2019

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, North Dakota

Re: Wireless Communication Facility Guidelines – Amendments 3

Dear Commissioners:

Attached is a Report of Action from PWPEC recommending approval of the attached revisions to the Wireless Telecommunication Facility Guidelines – Amendment 3. The proposed amendments are from discussions with various carriers and review of the FCC requirements. These guidelines are in addition to the requirements of Article 24-04 *Wireless Telecommunication Facilities in the Public Right of Way* and are an amendment to the original guidelines adopted on January 30, 2017 and January 14, 2019.

Changes included in this amendment are:

1. Adding an application fee and annual fee for placing a structure in the right of way for the sole purpose of wireless telecommunication. An Encroachment Agreement will be required prior to installing a structure in the right of way.
2. The previous versions included design information in the guidelines. This design information was removed from the guidelines and added to the Design Standards and Material Finish requirements to keep up with the rapidly changing industry.
3. Adding a reference to a newly created Construction Requirements for Wireless Telecommunication Facility.

**Recommended Motion:**

Approve the Resolution adopting the Wireless Communication Facility Guidelines – Amendment 3.

Respectfully,

Kevin Gorder, PE  
Division Engineer

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Small Cell Revisions

Location: Citywide

Date of Hearing: 6/24/2019

RoutingCity Commission  
PWPEC File  
Project FileDate7/29/2019  
X  
Kevin Gorder

The Committee reviewed communication from Division Engineer, Kevin Gorder, regarding revisions made to Small Cell Documents.

The following changes have been made to existing Small Cell Documents:

1. Language requiring Small Cell Providers prove placement in areas has been removed, as it is unduly burdensome.
2. A fee for installing a new pole in the right of way for the sole purpose of installing a Small Cell Facility was added.
3. A new document, Construction Requirements, was created to address what is required during construction.
4. A new document, Shot Clock Waiver Form, was created to allow Small Cell Providers a waiver process to work outside the FCC order and the required shot clocks.
5. A fillable application with required attachments has been created for ease of completion.

Staff is recommending approval of changes to Small Cell Documents.

On a motion by Brenda Derrig, seconded by Nicole Crutchfield, the Committee voted to recommend approval of all revisions made to Small Cell Documents.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the recommended changes along with the ordinance to the Small Cell Documents.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

| Yes        | No         |
|------------|------------|
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

|            |            |
|------------|------------|
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |

COMMITTEE

Tim Mahoney, Mayor  
Nicole Crutchfield, Director of Planning  
Steve Dirksen, Fire Chief  
Bruce Grubb, City Administrator  
Ben Dow, Director of Operations  
Steve Sprague, City Auditor  
Brenda Derrig, City Engineer  
Kent Costin, Finance Director

| Present                             | Yes                                 | No                       | Unanimous                           |
|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

  
Tom Knakmuhs  
Assistant City Engineer



# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** June 20, 2019  
**Re:** Small Cell Revisions

---

## **Background:**

About six months ago, Engineering brought this topic to PWPEC and City Commission with suggested updates that were needed to bring our ordinance into compliance with an FCC order from October 2018. We have been providing this information to small cell companies and they have offered some comments on our ordinance, guidelines, and design requirements.

In our ordinance, we removed some of the language requiring the Small Cell Provider prove placement in areas that would be unduly burdensome. This was removed since the reasoning of the FCC order required local governments make it easier to install these devices.

The guidelines were reformatted and two changes were made. We added a fee for installing a new pole in the right of way for the sole purpose of installing a Small Cell Facility. We also removed much of the design information that was in the guidelines and added this information to the Design Standard and Material Finish Requirements.

We also created a new document, Construction Requirements, to address what is required during construction, as well as a Shot Clock Waiver Form to allow Small Cell Providers a waiver process to work outside the FCC order and the required shot clocks. This would allow the Small Cell Providers and the City to work in a more collaborative process so both parties can communicate their wishes and work together to make this process more beneficial to both parties.

A fillable application with required attachments has also been created for ease of completion.

The last document that will be written is a Master Attachment Agreement. In conversations with Verizon, they are very concerned about length of term and payback for a large investment. We are proposing an agreement that will have a 10-year term with three five-year extensions if both parties agree. The agreement will then be renewable year to year.

## **Recommended Motion:**

Approve changes to Small Cell Documents as presented.

KOG/klb  
Attachments

## Wireless Telecommunication Facility Guidelines – Amendment 3

The following Guidelines are in addition to the requirements of Article 24-04 *Wireless Telecommunication Facilities in the Public Right-of-Way Requirements and Permits* and are an amendment to the original *Wireless Facility Guidelines* adopted by Commission on January 30, 2017 and January 14, 2019. All guidelines previously adopted, including amendments, apply unless otherwise stated herein.

The guidance found in this document is based on the FCC order released September 27, 2018. The City of Fargo reserves the right to modify these guidelines if there is a change in law. If an applicant feels the guidelines create insurmountable obstacles in providing service, the applicant must document and submit evidence that supports waiving any deployment requirements. Cost savings will not be allowed as the sole reason to waive any guidelines. The City Engineer will make the determination regarding the waiver of any of these guidelines and this decision can be appealed to the City Commission. The City of Fargo reserves the right to restrict locations or use as a regulatory function for public safety. The primary use of City owned infrastructure is to provide for transportation purposes, including but not limited to, roadway/street pavement, traffic control, and street lighting. City operations, maintenance and repair take priority over User's operations.

| Type of Installation                                                                                                                 | Regulatory Approvals Required                    | Agreements Required         | Fees                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Attachment to existing franchised utility pole owned by a third party (i.e. no pole replacement/ground disturbance)                  | Approval of Application                          | No                          | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>No annual fee             |
| Attachment to existing City-owned structure (i.e. no pole replacement/ground disturbance)                                            | Approval of Application                          | Master Attachment Agreement | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>\$175 annual fee per site |
| Attachment to existing Wireless Company or Wireless Infrastructure Provider owned pole (i.e. no pole replacement/ground disturbance) | Approval of Application                          | Encroachment Agreement      | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>\$175 annual fee per site |
| Installation of new or replacement franchised utility pole and attachment thereto.                                                   | Approval of Application<br><br>Excavation Permit | No                          | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>No annual fee             |
| Installation of replacement or new City-owned structure and attachment thereto.                                                      | Approval of Application<br><br>Excavation Permit | Master Attachment Agreement | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>\$175 annual fee per site |



|                                                                                                                                 |                                                  |                        |                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Installation of replacement or new Wireless Company or Wireless Infrastructure Provider owned structure and attachment thereto. | Approval of Application<br><br>Excavation Permit | Encroachment Agreement | One-time Application review fee of \$500 for the first 5 sites with an additional \$100 per site after 5<br><br>\$175 annual fee per site |
|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|

A Right of Occupancy Permit, obtained by a separate application, may be required as stated in Chapter 24-03 for installation of utilities (fiber, power, etc.) within the public right of way.

Master Attachment Agreements and Encroachment Agreements will be valid for 10 years. Both agreements can be modified/extended for five years. Details on the extension process will be described in the Master Attachment or Encroachment Agreement. Fees related to the extension of either agreement will be actual costs incurred to extend the agreement.

Fargo City Commission grants the City Engineer the authority to determine application requirements, design standards, material finish requirements, and construction requirements.

All other items in Amendment 2 not shown in Amendment 3 are deleted.

COMMISSIONER \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING WIRELESS TELECOMMUNICATION  
FACILITY GUIDELINES**

**WHEREAS**, the City of Fargo has enacted Article 24-04 of the Fargo Municipal Code which authorizes the installation of Wireless Telecommunication Facilities in the public right of way; and

**WHEREAS**, Section 24-0404 of the Fargo Municipal Code authorizes the Board of City Commission to adopt Wireless Telecommunication Facilities Guidelines establishing application and permit fees; and

**WHEREAS**, Section 24-0408 of the Fargo Municipal Code authorizes the Board of City Commission to adopt Wireless Telecommunication Facilities Guidelines establishing attachment fees.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF CITY COMMISSIONERS,**

1. The Wireless Telecommunication Facility Guidelines are hereby Amended as provided in the attached Wireless Telecommunication Facility Guidelines – Amendment 3, including but not limited to the fees as stated therein, in accordance with Article 24-04 of the Fargo Municipal Code.

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS \_\_\_\_\_. The following were absent and not voting: \_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted.

\_\_\_\_\_  
Timothy J. Mahoney, M.D. Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor



## Office of the City Attorney

City Attorney  
Erik R. Johnson

Assistant City Attorney  
Nancy J. Morris

July 25, 2019

Board of City Commissioners  
City Hall  
200 North Third Street  
Fargo, ND 58102

Dear Commissioners,

Presented to you today for your consideration is the culmination of extensive negotiations between Verizon Wireless and city of Fargo Engineering. As you may recall, the city adopted an ordinance, Article 24-04- Wireless Telecommunication Facilities in the Public Right of Way- Requirements and Permits, and subsequent amendments thereto. This Master Attachment Agreement (MAA) outlines the terms and conditions applicable to Verizon's attachment of small cell equipment to city infrastructure, as provided by Ordinance. In addition, the Addendum to the MAA, identified as an Encroachment Agreement, addresses the ability of Verizon to place stand alone poles in the City Right of Way in accordance with the Federal Communication Commission September 2018 Amended Order. Kevin Gorder will present revisions to the applicable Guidelines for your further consideration.

The Engineering Department, in conjunction with various providers, continues to work on the deployment process, including the Application Form and Design Standards. At least one other provider has successfully navigated the process and deployment of small cell technology is eminent. Thus, the goal of a "Controlled Yes" appears to be at hand.

The MAA and Ordinance terms provide that the city has the right to remove or relocate the attached equipment under various circumstances, the paramount consideration being the protection of the health and welfare of the public. It is my recommendation that the City Commission approve the attached Master Attachment Agreement and Encroachment Agreement in accordance with revised Article 24-04 and the Guidelines as presented to this Commission.

**Suggested Motion:** I move to approve the Master Attachment Agreement for Attachment of Wireless Communications Facilities to Certain City Owned Structures in the Public Right of Way and the Addendum to Master Attachment Agreement (Encroachment Agreement) between the City of Fargo and Verizon Wireless (VAW), LLC d/b/a Verizon Wireless.



Please feel free to contact me if you have any questions or concerns regarding this important step toward the deployment of 5g technology in the city of Fargo.

Regards,



Nancy J. Morris

Enclosure

Cc: Tamora Hartman, Verizon Wireless (via email)  
Mary Julius, Verizon Wireless (via email)  
Katherine D. Pasker, Moss & Barnett (via email)  
Brenda Derrig (via email)  
Kevin Gorder (via email)

**Addendum to Master Attachment Agreement for Use of the Right of Way  
(Encroachment Agreement)**

This Addendum to the Master Attachment Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Encroachment Agreement") made and entered into by between the City of Fargo, North Dakota, a North Dakota municipal corporation, with its principal offices located at 225 4th Street North, Fargo, North Dakota 58102, hereinafter designated "LICENSOR" or "City" and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware Limited Liability Company, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated "LICENSEE." LICENSOR/City and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party". The parties are signatories to that certain Master Attachment Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "Agreement").

**WITNESSETH**

**WHEREAS**, LICENSOR owns and controls the public right-of-way ("ROW") in the City of Fargo, North Dakota; and

**WHEREAS**, LICENSEE desires to install, maintain, and operate Wireless Communications Facilities or "WCF" on Wireless Support Structures installed for the sole purpose of providing wireless communication service, on the City ROW; and

**WHEREAS**, LICENSOR desires to grant to LICENSEE the nonexclusive right to construct Wireless Support Structures on the City ROW in order to provide wireless communication services; and

**WHEREAS**, LICENSOR and LICENSEE have entered into a Master Attachment Agreement, detailing the terms by which LICENSEE may attach Wireless Communication Facilities to City owned Structures within the ROW; and

**WHEREAS**, LICENSOR and LICENSEE agree that LICENSEE may install stand alone Wireless Support Structures under certain terms and conditions as stated herein and as provided for in the Master Attachment Agreement; and

**WHEREAS**, LICENSOR and LICENSEE acknowledge that they will execute and make part of this Encroachment Agreement a Site License, an exhibit copy of which is attached hereto as Exhibit A, with respect to ROW which the Parties agree to license.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, do hereby further covenant and agree as follows:

**I. USE OF PUBLIC RIGHTS-OF-WAY**

- A. LICENSOR hereby grants to LICENSEE the right to use the municipal public right-of-way for the installation, maintenance and operation of LICENSEE's

wireless communications equipment in and on LICENSEE owned Wireless Support Structures located within the public right-of-way. LICENSEE's use of the right-of-way is limited to the area needed for the LICENSEE's Wireless Support Structure and the ground immediately adjacent to the Wireless Support Structure to access and operate the WCF (the "Premises").

- B. All communications equipment shall be installed in accordance with applicable Laws and LICENSEE shall comply with all applicable laws, ordinances, rules and regulations adopted by LICENSOR. Within the public rights-of-way, the location of the wireless communications equipment shall be subject to the reasonable and proper regulation, direction and control of the LICENSOR, or the official to whom such duties have been delegated by LICENSOR.
- C. LICENSEE and its authorized contractors shall give LICENSOR reasonable notice of the dates, location, and nature of all construction and major maintenance work to be performed on its wireless communications equipment that requires excavation or obstruction within the public rights-of-way, and obtain all necessary permits and permissions prior to commencement of any work in the right of way.

## **II. RATE**

The rental amount for each Wireless Support Structure shall be the rate established by Resolution of the City Commission and set forth in each Site License.

## **III. MASTER ATTACHMENT AGREEMENT PROVISIONS APPLICABLE**

All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. To the extent the Agreement terms are only applicable to the attachment to LICENSOR's property, the provision is excluded. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Encroachment Agreement, the terms of this Encroachment Agreement shall control. Capitalized terms used in this Encroachment Agreement shall have the same meaning described for them in the Agreement unless otherwise indicated herein. In all other respects, the Master Attachment Agreement shall remain in full force and effect.

**Remainder of page intentionally left blank. Signature page follows.**

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

City of Fargo, a North Dakota Municipal Corporation

By: \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

LICENSEE:

Verizon Wireless (VAW) LLC d/b/a  
Verizon Wireless, a Delaware Limited  
Liability Company

By: \_\_\_\_\_

Name: **Rommel Z. Angeles**  
**Director - Network Field Engineering**

Title: \_\_\_\_\_

Date: 07/24/2019

**EXHIBIT "A"**  
**SITE LICENSE**

This Site License granting a right to use the Premises is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the City of Fargo, North Dakota, located at 200 Third Street North, Fargo, ND 58102 ("LICENSOR"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LICENSEE").

1. **Encroachment Agreement.** This Site License is referenced within and made part of that certain Master Attachment Agreement and the Addendum thereto between the City of Fargo and Verizon Wireless, dated \_\_\_\_\_, \_\_\_\_\_ (the "Encroachment Agreement"). All of the terms and conditions of the Agreement and Encroachment Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement or Encroachment Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and Encroachment Agreement and this Site License, the terms of this Site License shall control. Capitalized terms used in this Site License shall have the same meaning described for them in the Encroachment Agreement unless otherwise indicated herein.
2. **Premises.** The Premises is located at \_\_\_\_\_ in the City of Fargo, County of Cass, State of North Dakota, as depicted on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date shall be \_\_\_\_\_. The initial term shall end on December 31, following the tenth (10<sup>th</sup>) anniversary of the Commencement Date, subject to extension pursuant to the terms of the Encroachment Agreement.
4. **Consideration.** Annual rent for the initial term shall be in the amount of One Hundred Seventy-Five and No/100 Dollars, (\$175.00), prorated from the Commencement Date until December 31 following the Commencement Date.
5. **Site Specific Terms.** (Include any site-specific terms).

*Remainder of page intentionally left blank*



IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

By: [EXHIBIT ONLY — NOT FOR EXECUTION]

Print Name: \_\_\_\_\_

Title: City Engineer

Date: \_\_\_\_\_

LICENSEE:

By: [EXHIBIT ONLY — NOT FOR EXECUTION]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1**  
Premises Description

**MASTER ATTACHMENT AGREEMENT FOR ATTACHMENT OF WIRELESS  
COMMUNICATIONS FACILITIES TO CERTAIN CITY OWNED STRUCTURES IN  
THE PUBLIC RIGHT OF WAY**

This Master Attachment Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the City of Fargo, North Dakota, a North Dakota municipal corporation, with its principal offices located at 225 4th Street North, Fargo, North Dakota 58102, hereinafter designated "LICENSOR" or "City" and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware Limited Liability Company, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920; hereinafter designated "LICENSEE." LICENSOR/City and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WITNESSETH**

**WHEREAS**, LICENSOR owns and controls, or will own and control, certain city-owned structures, including light poles, traffic lights, and other structures designed and used for public purposes, whether existing, replacement, or new stealth structures, within the public right-of-way ("ROW") in the City of Fargo, North Dakota; and

**WHEREAS**, LICENSEE desires to install, maintain, and operate Wireless Communications Facilities or "WCF", as that term is defined, in and/or upon certain of LICENSOR's City Owned Structures ("Premises"); and

**WHEREAS**, LICENSOR desires to grant to LICENSEE the nonexclusive right to attach Wireless Communications Facilities to one or more such Premises for the purpose of providing wireless communication services; and

**WHEREAS**, LICENSOR and LICENSEE desire to enter into this Agreement to define the general terms and conditions that will govern their relationship with respect to particular Premises upon which LICENSOR may wish to permit LICENSEE to install, maintain and operate Wireless Communications Facilities as hereinafter set forth; and

**WHEREAS**, LICENSOR and LICENSEE acknowledge that they will execute and make part of this Agreement a Site License, an exhibit copy of which is attached hereto as Exhibit A, with respect to particular Premises which the Parties agree to license.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

**I. DEFINITIONS**

In addition to the definitions in this Agreement, all terms within this Agreement that are defined in Section 24-0402 of the Fargo Municipal Code shall have the same meaning as set forth therein.

## II. LICENSEE'S REQUEST TO USE PREMISES

- A. Before the LICENSEE shall make use of the certain space on any of the LICENSOR's Premises within the public rights of way, LICENSEE shall (1) submit an Application to the City Engineer for review and approval in accordance with Article 24-04 of the Fargo Municipal Code ("Ordinance") and the Wireless Telecommunication Facility Guidelines; and (2) obtain a Site License, in a form that is consistent with the Site License that is attached hereto as Exhibit "A," conferring upon LICENSEE the non-exclusive right to attach a Wireless Communication Facility to the Premises and to install, use, operate, maintain, repair, replace, store or remove its antennas, equipment, and appurtenances in or on the Premises in a manner consistent with the terms of this Agreement. Any Site License issued pursuant to this Agreement shall be effective upon issuance of the Site License for the site under Article 24-04.
- B. Before a Site License conferring Wireless Communication Facility attachment rights will be issued, LICENSEE must submit the following documentation, in such form as the LICENSOR may reasonably require:
1. Construction Plans. The Construction Plans must identify the Premises of the LICENSOR to be used, the number and character of the attachments to be placed on such Premises, preexisting equipment necessary for LICENSEE's use, whether LICENSEE intends to install new or replace existing Premises, any additional structures which may be required, and any new installations for transmission conduit, pull boxes, and appurtenances. This information shall be provided through drawings showing the location and materials of all planned installations, including existing utilities; Construction Specifications and Product Specifications for all planned installations; Diagrams and Shop Drawings of proposed WCFs; and a complete and detailed inventory of all equipment and personal property of LICENSEE to be placed on the Licensed Premises.
  2. Structural Study. LICENSEE must obtain and submit to the LICENSOR a structural engineering calculations and analysis ("Study"), carried out by a qualified structural engineer, showing that the Premises is/are able to support the Wireless Communications Facilities. Said study must be signed by a professional engineer licensed in North Dakota. If the Study finds that any proposed Premises are inadequate to support the proposed antenna loads, LICENSOR may decline to permit installation or may require replacement of the structure as a condition of approval.
  3. Work Schedule. LICENSEE must describe the expected work schedule to install and commence operation of the WCF, including a proposed date on which construction is to begin, the days on which construction is to occur and the nature and duration of anticipated obstructions in the public Right of Way, in accordance with Article 24-03 of the Fargo Municipal Code.
  4. Completed Application. LICENSEE must complete all application requirements in advance of issuance.

- C. LICENSEE shall have the non-exclusive right, at its sole cost and expense, to use the Premises to install, operate, support and maintain Wireless Communications Facilities, only as described by LICENSEE in an applicable Site License and other documentation provided to and approved by LICENSOR ("Approved Use").
- D. All Premises used by LICENSEE under this Agreement shall remain the property of LICENSOR. Any payments made by LICENSEE for changes to existing or new Premises, conduits, conductor pull boxes, facilities, and appurtenances under this Agreement shall not entitle LICENSEE to ownership of any of said infrastructure. In the event LICENSOR approves the installation by LICENSEE of a replacement structure or a new stealth structure in accordance with Section 240406 of the Fargo Municipal Code, such structure shall be dedicated to and owned by the City upon completion of structure installation. No Site License for such Premises will be granted without LICENSOR first having executed a bill of sale for the structure, free of all liens and encumbrances, substantially as set forth in Exhibit "B" to this Agreement, which shall convey such structure immediately upon completion of construction and inspection by LICENSEE.
- E. LICENSOR reserves the right to exclude any of LICENSOR's City Owned Structures from use by LICENSEE on the basis of generally applicable health, safety, and welfare regulations, including the Design Standards and Material Finish Requirements for Wireless Telecommunication Facility policy.

### III. USE OF PREMISES

- A. The primary use and purpose of the Premises is to serve a public purpose, for the benefit of the City ("Primary Use"). LICENSOR's operations in connection with pursuit of the Primary Use ("LICENSOR's Operations") take priority over LICENSEE's operations.
- B. LICENSEE agrees that the following priorities of use, in descending order, shall apply in the event of communication interference, emergency public safety needs, Premises repair or reconditioning, or other conflict while this Agreement is in effect, and LICENSEE's use shall be subordinated accordingly:
  - 1. LICENSOR;
  - 2. Public safety agencies, including law enforcement, fire, and ambulance services, that are not related to LICENSOR;
  - 3. Other governmental agencies where use is not related to public safety;
  - 4. Pre-existing licensees; and
  - 5. LICENSEE.
- C. In the event of jeopardy that poses an immediate threat of substantial harm or damage to the health, safety, and welfare of the public and/or Premises, as solely determined by LICENSOR ("Jeopardy"), the LICENSOR may take actions the LICENSOR determines are required to protect the health, safety, and welfare of the Public, or personal property of LICENSOR, from such Jeopardy.

- D. If the LICENSOR determines that the conditions of Jeopardy would be addressed by cessation of LICENSEE's operations, LICENSEE shall immediately cease its operations on the Premises upon notice from LICENSOR to do so, and the applicable Site License shall terminate.
- E. LICENSEE must obtain through a separate permitting process any/all permits required to install any utilities on, over and/or under the Premises as necessary for LICENSEE to operate its Wireless Communications Facilities. All costs associated with this installation of said utilities shall be solely those of the LICENSEE, including associated on-going monthly usage fees charged by the utility providers (i.e., electric meter).

#### IV. INSTALLATION AND MAINTENANCE OF EQUIPMENT

##### A. Approved Contractors.

- 1. LICENSEE's contractor or agent ("Contractor") shall be registered with the City Engineer and comply with Section 24-03 of the Fargo Municipal Code, and any other applicable permitting and licensing requirements under City law. LICENSEE shall notify the City in writing of any such Contractor, and shall clearly identify the scope and nature of the work to be undertaken by the Contractor, an appropriate point of contact, and other useful information. LICENSEE shall promptly notify the City of any substantial relevant changes to the Contractor information.
- 2. Without limiting LICENSOR's right of action at law or in equity, LICENSEE assumes all liabilities of, and responsibility for, the activities of Contractors within the scope of this Agreement.

B. Notice of Work Orders. LICENSEE shall provide reasonable notice to the City Engineer prior to engaging in any work at particular Premises. Such notice shall include a short description of the contemplated work, identification of the entity (such as an approved Contractor) authorized by the LICENSEE to complete the work, a point of contact and contact information for such entity, and an estimated timeframe for completion. Such information shall be provided in such form and method as the City Engineer may require.

C. Construction Inspection. All construction activity shall be performed in accordance with all applicable laws and guidelines, and shall be subject to inspection and approval by LICENSOR.

D. FCC Requirements. LICENSEE shall implement all measures at the transmission site required by FCC regulations, including but not limited to radiofrequency transmission controls and limitations, posting signs, and markings.

E. Exposed Facilities. For all facilities affixed to Premises that have exterior exposure, LICENSEE shall comply with all applicable Guidelines.

- F. Damage by LICENSEE. Any damage to the Premises, or LICENSOR's equipment thereon, caused by LICENSEE's permitted installation or operations shall be repaired or replaced at LICENSEE's expense and to LICENSOR's reasonable satisfaction.
- G. As-Built Drawings ("As-Built"). Within sixty (60) days after LICENSEE installs the WCF, LICENSEE shall provide LICENSOR with an As-Built drawing, and a digital photograph of the facilities installed on each location and any improvements installed on the Premises, which shall show the actual location of all equipment and improvements. Said drawings shall be accompanied by a complete inventory of all installed equipment and facilities.
- H. Premises Alterations. LICENSOR reserves the right to take any action it deems necessary, in its sole and reasonable discretion, to repair, maintain, alter, or improve the Premises in connection with LICENSOR's operations and the provisions of this Agreement.
- I. Structure Reconditioning and Repair.
  - 1. From time to time, LICENSOR may paint, recondition, or otherwise improve or repair the Premises in a substantial way ("Reconditioning Work"). LICENSEE shall cooperate with LICENSOR to carry out Reconditioning Work activities in a manner that minimizes interference with LICENSEE's Approved Use.
  - 2. Except in cases of emergency, prior to commencing Reconditioning Work, LICENSOR shall provide LICENSEE with thirty (30) days prior written notice thereof. Upon receiving such notice, it shall be the sole responsibility of LICENSEE to provide adequate measures to cover or otherwise protect LICENSEE's Wireless Communications Facilities from the consequences of such activities, including but not limited to paint and debris fallout. LICENSOR reserves the right to require LICENSEE to remove all Wireless Communications Facilities from the Premises during Reconditioning work.
  - 3. During LICENSOR's Reconditioning Work, LICENSEE may request permission from LICENSOR to locate a mobile site on or near the Premises, which request shall not be unreasonably denied. If the site will not accommodate mobile equipment, it shall be LICENSEE's responsibility to locate auxiliary sites.
  - 4. LICENSEE may request a modification of LICENSOR's procedures for carrying out Reconditioning Work in order to reduce the interference with LICENSEE's Approved Use. If LICENSOR agrees to the modification, LICENSEE shall be responsible for all incremental cost related to the modification.

## V. CONDITION OF PREMISES

LICENSEE must adhere to the provision of Fargo Municipal Code §§ 24-0412, 240414 and 24-0415 at all times, and agrees to address any and all repair issues caused by LICENSEE's use of the Premises. LICENSOR makes no guarantee as to the condition of any Premises with regard to LICENSEE's intended use.

LICENSEE shall, at its own cost and expense, maintain its Wireless Communications Facilities in good and safe condition, and in compliance with applicable fire, health, building, and other life safety codes. The LICENSEE shall obtain from the LICENSOR any and all permits required for the purposes of maintaining the installation. Applicable fees for any permits, attachment fees, or right-of-way use fees shall be borne by the LICENSEE and shall be set forth in the Guidelines. LICENSEE shall be bound by the requirements of said permits.

## VI. TERM

- A. The initial term and all extensions under this Agreement or any Site License shall be collectively referred to herein as the "Term."
- B. This Agreement shall be for an initial term of ten (10) years commencing upon the execution hereof by both Parties (the "Effective Date").
- C. This Agreement may be renewed for three (3) additional five (5) year terms by mutual agreement of the parties.
- D. Unless otherwise agreed by the Parties in writing, the term of each Site License shall commence on the date specified therein ("Commencement Date"), and shall end on December 31, following the tenth (10<sup>th</sup>) anniversary of the Commencement Date. Following the initial Term, each Site License may be renewed by mutual agreement of the parties for three (3) additional five (5) year terms. LICENSEE shall provide written notice of each extension of the applicable Site License at least 180 days prior to the end of the then-current term in the form attached hereto as Exhibit C, to be signed and returned by LICENSOR. If LICENSOR does not acknowledge and return or object to such notice within 60 days of receipt, the Site License term extension shall be deemed approved.
- E. If at the end of the Initial Term or any extension term agreed to by the parties this Agreement has not been terminated as provided for herein, this Agreement shall continue in force upon the same covenants, terms, and conditions for a further term of one (1) year and annual terms thereafter until terminated by either party by giving the other written notice of its intention to terminate at least 180 days prior to the end of such term.
- F. Except in the case of termination of this Agreement for cause, any Site License in effect following expiration or non-renewal of this Agreement shall be and remain subject to and governed by the terms of this Agreement. No Site License may be renewed, nor may new Site Licenses be issued, if this Agreement is no longer in effect.



## **VII. RENTAL PAYMENTS**

- A. On the Commencement Date, rental payments for attachments under this Agreement shall commence and be due thirty (30) days from invoice, such invoice to be calculated on the pro-rated annual rent from the Commencement Date. After the initial, pro-rated rent payment, LICENSEE shall pay the total annual rental for Premises as set forth in each Site License, annually in advance, on or before January 1 of each year. The rental amount for each Site License shall be the rate established by Resolution of the City Commission in the Guidelines.
- B. Intentionally omitted.
- C. Failure by LICENSEE to make payment within thirty (30) days of receipt of Notice of Non-Payment shall result in interest accruing at a rate of 1 1/2% per month, until paid in full. Failure to make payment on or before June 1 of a non-pro-rated Site License year shall be deemed a default of the terms of this Master Attachment Agreement, entitling LICENSOR to pursue remedies as specified in Section XVII.
- D. Rent Adjustments. The City Commission may adjust the annual rent amount by Resolution, which shall be effective the following January 1 and shall apply to all new (or renewed) Site Licenses executed after that date. LICENSOR will provide thirty (30) days prior written notice to LICENSEE before consideration of any such adjustment by the Commission at a public hearing.

## **VIII. USE: GOVERNMENTAL APPROVAL**

LICENSEE shall use the Premises for the purpose of constructing, attaching, maintaining, repairing and operating a Wireless Communications Facility in a manner consistent with this Agreement and each Site License. It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon its obtaining and maintaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or other governmental authorities as well as a satisfactory structural analysis, which will permit LICENSEE's use of the Premises as set forth above. LICENSOR shall cooperate with LICENSEE in its effort to obtain such approvals. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LICENSEE determines that such Governmental Approvals may not be obtained; (iv) LICENSEE determines that the Premises is no longer technically compatible for its use; or (v) LICENSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, then LICENSEE shall have the right to terminate the applicable Site License. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the notice provisions set forth herein and shall be effective upon the mailing of such notice by LICENSEE, or upon such later date as designated by LICENSEE. All rentals paid prior to the termination date shall be retained by LICENSOR. Upon such termination, the applicable Site License shall be of no further force or effect except to the

extent of the representations, warranties and indemnities made by each Party to the other thereunder.

#### **IX. INDEMNIFICATION**

LICENSEE shall indemnify and hold LICENSOR harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the LICENSEE, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the LICENSOR, or its employees, contractors or agents.

#### **X. INSURANCE**

The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

- A. Worker's Compensation. The LICENSEE must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of \$500,000 each accident/\$500,000 disease-each employee/\$500,000 disease-policy limit. LICENSEE shall secure a Waiver of Subrogation endorsement in favor of LICENSOR.
- B. General Liability. The LICENSEE must maintain occurrence form commercial general liability coverage.
  - 1. Such coverage shall include, but not be limited to, bodily injury, property damage—personal and advertising injury, for the hazards of Premises/Operation, Products/Completed Operations, broad form contractual liability, property damage liability, property damage liability, and independent contractors.
  - 2. The LICENSEE must maintain aforementioned commercial general liability coverage with limits of liability of \$1,000,000 per occurrence; \$2,000,000 general aggregate and \$2,000,000 products and completed operations aggregate.
  - 3. LICENSEE will maintain Completed Operations coverage for a minimum of two (2) years after the construction is completed.
- C. Automobile Liability. The LICENSEE must carry Automobile Liability coverage. Coverage shall afford limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,000,000 combined single limit each occurrence. Coverage shall be

provided by Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles.

- D. Excess/Umbrella Liability insurance with a limit of \$10,000,000 per occurrence and \$10,000,000 aggregate providing coverage above the primary commercial general liability, commercial automobile liability and employer's liability insurance required above.
- E. LICENSEE Property Insurance. The LICENSEE must keep in force for the duration of this Master Attachment Agreement and each Site License a policy covering damages to LICENSEE's property and the Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.
- F. Additional Insured — Certificate of Insurance. The LICENSEE shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated B+ (VIII) or better), licensed to do business in the State of North Dakota, which includes all coverage required in this Section. LICENSEE will include the LICENSOR as an Additional Insured as their interest may appear under this Agreement on the General Liability and Commercial Automobile Liability Policies, and Excess/Umbrella Liability coverage.

#### **XI. LIMITATION OF LIABILITY**

LICENSOR shall not be liable to the LICENSEE, or any of its respective agents, representatives, employees, or customers, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The Parties hereby acknowledge and agree that LICENSEE shall not be liable to LICENSOR for any environmental conditions, including a release of hazardous materials, that existed on the Premises prior to the date the applicable Site License was executed or that otherwise did not result from LICENSEE's activities in the Premises.

#### **XII. INTERFERENCE**

LICENSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LICENSOR or other licensees of the Premises which existed on the Premises prior to the date this Agreement is executed by the Parties. Upon request of LICENSOR, LICENSEE will obtain a radio frequency interference study carried out by an independent professional radio frequency engineer ("RF Engineer"), prior to installation, certifying that LICENSEE's intended use will not interfere with any existing, licensed communications facilities, as well as LICENSOR's licensed and unlicensed communications facilities, which are located on or near the Premises.

LICENSEE shall not transmit or receive radio waves at the Premises until such evaluation has been satisfactorily completed.

In the event any after-installed LICENSEE's equipment causes interference, and after LICENSOR has notified LICENSEE in writing of such interference, LICENSEE will take all steps necessary to correct and eliminate the interference consistent with applicable FCC regulations, including but not limited to, at LICENSOR's option, having the LICENSEE power down its equipment and later power up its equipment for intermittent testing. LICENSEE shall be responsible for all costs incurred relating to LICENSEE's compliance with this Section.

### **XIII. REQUIRED REMOVAL**

- A. At End of Term. LICENSEE shall, within ninety (90) days after any termination of this Agreement or applicable Site License, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted. LICENSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LICENSEE shall remain the personal property of LICENSEE and LICENSEE shall have the right to remove the same at any time during the Term. All poles, conduit and pole boxes used in support of the Primary Use are, and shall remain, property of the LICENSOR. If such time for removal causes LICENSEE to remain on the structure after termination, LICENSEE shall pay rent at the then existing rate or on the existing pro-rata basis until such time as the removal of the antenna structure, fixtures and all personal property are completed. All rentals paid prior to said termination date shall be retained by LICENSOR.
- B. LICENSOR may require removal of LICENSEE'S Wireless Communications Facilities from one or more Premises if LICENSOR determines in its reasonable discretion that such removal is necessary for the protection of public health, safety and welfare, or if the facility interferes with the use of the public Right of Way or city facilities or services. Any Site License held by LICENSEE corresponding to such Premises shall be null and void, and LICENSEE shall have no further right or claim against LICENSOR with regard to damages, lost profits or any other compensation relating to the required removal. Notwithstanding the foregoing, LICENSOR will use reasonable efforts, in cooperation with LICENSEE, to identify a reasonable substitute location for LICENSEE's facilities affected by such removal. LICENSEE shall remove the equipment in accordance with Fargo Municipal Code §24-0417.

### **XIV. ASSIGNMENT**

This Agreement or any Site Licenses, or rights thereunder, may not be sold, assigned, or transferred at any time by LICENSEE without the written consent of the LICENSOR, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding sentence, LICENSEE may sell, assign or transfer this Agreement or any Site Licenses to LICENSEE's parent, affiliates, or subsidiaries, or to any entity which acquires

all or substantially all of the LICENSEE's assets in the market defined by the FCC in which the Premises is located by reason of a merger, acquisition, or other business reorganization. For purposes of this paragraph, an "affiliate", "parent" or "subsidiary" means an entity in which LICENSOR owns greater than fifty percent (50%) interest. LICENSOR hereby consents to the assignment by LICENSEE of its rights under this Agreement as collateral to any entity which provides financing for the purchase of the equipment to be installed at the Premises.

#### **XV. NOTICES**

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR:           City of Fargo  
                          Office of the City Engineer  
                          225 4<sup>th</sup> Street North  
                          Fargo, ND 58102

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

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

#### **XVI. DEFAULT**

In the event there is a breach by the Party with respect to any of the provisions of this Agreement, including any Site License, the non-breaching Party shall give the breaching Party written notice of such breach ("Notice of Default"). After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach to the satisfaction of the non-breaching Party. The breaching party may extend the cure period if the breaching party commences the cure within the thirty (30) day period to cure and thereafter continuously and diligently pursues the cure to completion. If frost conditions prevent a cure from being reasonably commenced, this 30 day cure period may be tolled at LICENSOR's discretion until said frost subsides.

#### **XVII. REMEDIES**

In the event of an uncured default by LICENSEE with respect to a material provision of this Agreement, including any Site License, without limiting the LICENSOR in the exercise of any right or remedy which LICENSOR may have by reason of such default, LICENSOR may terminate the applicable Site License and/or pursue any remedy now or hereafter available to LICENSOR under the Laws of the State of North Dakota, including but not limited to termination of this Master Attachment Agreement. Following such termination, within ninety (90) days of receipt of written notice from LICENSOR, LICENSEE shall remove all communications facilities from all Premises, at LICENSEE's expense.

Further, upon a default, the LICENSOR may at its option (but without obligation to do so), perform the LICENSEE's duty or obligation on the LICENSEE's behalf, including but not limited to the removal of the LICENSEE's equipment and restoration of the right of way in accordance with Fargo Municipal Code Article 24-04. The costs and expenses of any such performance by the LICENSOR shall be due and payable by the LICENSEE upon invoice therefor. The obligations of this Section XVII shall survive the termination of this Agreement.

#### **XVIII. CASUALTY**

In the event of damage or casualty to the Premises that cannot reasonably be expected to be repaired or replaced within forty-five (45) days (or for a longer period due to winter frost conditions), or if the Premises is damaged so that such damage may reasonably be expected to disrupt LICENSEE's operations for more than forty-five (45) days, then LICENSEE may, provided LICENSOR has not completed the restoration or replacement of the Premises, terminate the Site License upon fifteen (15) days prior written notice to LICENSOR. The rent shall abate during the period of repair or replacement until such time as LICENSEE's equipment is functional.

#### **XIX. APPLICABLE LAWS**

The terms and conditions of this Agreement shall be governed and interpreted by the Laws (as hereafter defined) of the State of North Dakota, and any applicable federal laws or regulations. LICENSEE shall, in respect to the condition of the Premises and at LICENSEE's sole cost and expense, comply with (a) all Laws relating solely to LICENSEE's specific and unique nature of use of the Premises, and (b) all building codes requiring modifications to the Premises due to the improvements being made by LICENSEE. Laws means any and all laws, regulations, ordinances, resolutions, judicial decisions, rules, permits and approvals applicable to the subject of this Agreement or LICENSEE's use that are in force during the term of this Agreement, as lawfully amended. The Parties shall comply with all applicable Laws. This Agreement shall in no way limit or waive either party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially altered, preempted, or superseded by changes in Laws, the parties agree to amend the Agreement and/or Site License to reflect the change in Laws.

#### **XX. MISCELLANEOUS**

- A. This Agreement, including any Site Licenses that may be executed from time to time hereunder, contain all agreements, promises and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises or understanding shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, and such party shall have the right to enforce such rights at any time.
- B. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- C. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

**Remainder of page intentionally left blank. Signature page follows.**

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

City of Fargo, a North Dakota Municipal Corporation

By: \_\_\_\_\_

Timothy J. Mahoney, M.D., Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

LICENSEE:

Verizon Wireless (VAW) LLC d/b/a  
Verizon Wireless, a Delaware Limited  
Liability Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ **Rommel Z. Angeles**  
**Director - Network Field Engineering**

07/24/2019



**EXHIBIT "A"**  
**SITE LICENSE**

This Site License granting a right to attach to a certain city-owned structure in the public right of way ("Premises"), and to install, operate and maintain wireless communications facilities on the Premises, is made this \_\_\_\_\_ day of \_\_\_\_\_, between the City of Fargo, North Dakota, located at 200 Third Street North, Fargo, ND 58102 ("LICENSOR"), and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LICENSEE").

1. **Master Attachment Agreement.** This Site License is referenced within and made part of that certain Master Attachment Agreement between Fargo and Verizon Wireless, dated \_\_\_\_\_ (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site License, the terms of this Site License shall control. Capitalized terms used in this Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Premises.** LICENSOR's Premises is located at \_\_\_\_\_ as depicted on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date and the term of the Site License shall be \_\_\_\_\_. The initial Term shall end on December 31, following the tenth (10<sup>th</sup>) anniversary of the Commencement Date, subject to extension pursuant to the terms of the Agreement.
4. **Consideration.** Annual rent for the initial term shall be in the amount of One Hundred Seventy-Five and No/100 Dollars, (\$175.00), prorated from the Commencement Date until December 31 following the Commencement Date.
5. **Site Specific Terms** (Include any site-specific terms).

**Remainder of page intentionally left blank. Signature page follows.**

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LICENSOR:

City of Fargo, a North Dakota Municipal Corporation

By: [EXHIBIT ONLY — NOT FOR EXECUTION]

Print Name: \_\_\_\_\_

Title: City Engineer

Date: \_\_\_\_\_

LICENSEE:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware Limited Liability Company

By: [EXHIBIT ONLY — NOT FOR EXECUTION]

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1**

**Premises Description**

(Include Map, Pole Diagram, Site Plan and Table Listing All Pole Locations)

**EXHIBIT B  
BILL OF SALE**

**IN CONSIDERATION** of the right to attach Wireless Communications Facilities to a particular city-owned structure within the public right of way received by Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("**SELLER**"), from City of Fargo, 200 N. 3<sup>rd</sup> Street, Fargo, ND, 58102 ("**BUYER**"), receipt and sufficiency of which are hereby acknowledged, **SELLER** grants, sells, conveys, transfers and delivers to **BUYER** the following structure, including miscellaneous appurtenances currently installed upon or located within the structure (collectively referred to as the "Structure"):

Structure Address / Identification: \_\_\_\_\_

To have and to hold the same unto **BUYER** and **BUYER'S** executors, administrators, and assigns, forever. The sale of the above-described Structure pursuant to this Bill of Sale shall only be effective upon completion of the installation of the Structure in the location specified above, which installation shall be performed by **SELLER** at **SELLER's** sole cost and expense.

Legal title and equitable ownership in the Structure is transferred together with an equal interest in all currently installed fixtures, accessories and equipment and all other necessities thereto appertaining and belonging except the Wireless Communications Facilities attached thereto, including but not limited to all antennas, remote radio units, power supplies and appurtenances as identified in the Wireless Communications Facilities Permit Application.

**SELLER** warrants that the Structure is transferred free and clear from any lien, security interest, mortgage or other encumbrance.

**SELLER** warrants to **BUYER** that **SELLER** is the legal and true owner of the Structure and that **SELLER** has the right to transfer ownership of the Structure.

**SELLER** warrants that the Structure has been constructed pursuant to and in compliance with the specifications provided by **BUYER**, and that the equipment has been installed pursuant to the specifications provided by **BUYER**. The Structure is subject to the manufacturer warranty and the installer warranty attached hereto and incorporated by reference.

**SUBJECT TO THE FOREGOING, SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PERSONAL PROPERTY OR ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BY ITS ACCEPTANCE OF THIS BILL OF SALE, BUYER ACKNOWLEDGES THAT IT HAS REVIEWED AND APPROVED THE SPECIFICATIONS PROVIDED BY IT AND THAT IT HAS FULLY INSPECTED THE PERSONAL PROPERTY AND BUYER ACCEPTS THE SAME "WHERE IS" AND IN ITS PRESENT USED AND "AS IS" CONDITION.**

**BUYER and SELLER acknowledge that this Bill of Sale, together with the corresponding the Master Attachment Agreement between the Parties, constitute the ENTIRE AGREEMENT and agree to be bound by the terms therein.**

IN WITNESS WHEREOF, **BUYER AND SELLER** executed.

(Signature of **SELLER**)

Verizon Wireless (VAW) LLC d/b/a Verizon  
Wireless, a Delaware Limited Liability Company

By: [EXHIBIT ONLY — NOT FOR EXECUTION]

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Signature of **BUYER**)

City of Fargo, a North Dakota Municipal  
Corporation

By: [EXHIBIT — NOT FOR EXECUTION]

\_\_\_\_\_, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

\_\_\_\_\_, City Auditor

**ACKNOWLEDGEMENTS**

**SELLER ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Print or Type Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**BUYER ACKNOWLEDGEMENT**

STATE OF NORTH DAKOTA )  
 ) ss:  
COUNTY OF CASS )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, a notary public in and for said county and state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the Mayor and Auditor, respectively, of the CITY OF FARGO, NORTH DAKOTA, a municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

\_\_\_\_\_  
Notary Public  
Cass County, North Dakota

Exhibit C

Form Notice of Site License Extension

Notice of Site License Extension

TO: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Site License, dated \_\_\_\_\_, between the City of Fargo, North Dakota, a North Dakota municipal corporation ("LICENSOR") and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware Limited Liability Company ("LICENSEE") for the Premises located at \_\_\_\_\_.

Kindly sign and return your acknowledgement to the following:

In accordance with Section VI.d. of the Master Attachment Agreement, the Site License may be extended for three additional five (5) year terms by mutual consent of the parties prior to the end of the then-current term. Licensee requests that Licensor consent to the extension of the Site License for one (1) additional five (5) year term, which extension term will commence on \_\_\_\_\_. This is the \_\_\_\_\_ (first, second or third) five year term extension.

In accordance with Section VI.d. of the Master Attachment Agreement, the Site License extension for one (1) additional five (5) year term will be deemed acknowledged and accepted by Licensor if Licensor does not acknowledge and return or object within 60 days of receipt of this Notice.

Very truly yours,

[VERIZON ENTITY NAME]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and approved:

City of Fargo, a North Dakota Municipal Corporation

By: [EXHIBIT — NOT FOR EXECUTION]

\_\_\_\_\_, Mayor

Date: \_\_\_\_\_