

INDEMNIFICATION AGREEMENT

THIS AGREEMENT is entered into this 15th day of December, 2009 by and between the CITY OF FRESNO, a municipal corporation (hereinafter CITY), and Fresno MSA Limited Partnership, a California limited partnership d/b/a Verizon Wireless (hereinafter APPLICANT).

WITNESETH:

WHEREAS, APPLICANT has applied to CITY for a LAND USE APPROVALS affecting the Subject Property described in Exhibit "A," and,

WHEREAS, litigation challenging the granting or issuance of land use approvals by governmental bodies is proliferating, and such litigation exposes CITY to potential liability for damages, costs, and attorney's fees; and,

WHEREAS, in such litigation, the person or entity receiving land use approvals is designated as a real party in interest and is the party that primarily and directly benefits from the granting or issuance of the land use approvals; and

WHEREAS, the City's Director of Planning and Development, Fresno City Planning Commission and Fresno City Council are objective decision-making bodies, and therefore have no special interest in the approval or denial of land use applications or the outcome of litigation arising from such grant or denial, except as to those which promote public policy; and

WHEREAS, CITY incurs great expense in the active defense of such litigation and, if unsuccessful, may also be required to pay the prevailing party's attorney's fees and costs; and,

WHEREAS, fairness and sound fiscal policy require that the person or entity receiving the benefits of a land use approval should also bear the burden of the liability for potential injuries and the expense of such litigation and claims; and

WHEREAS, APPLICANT and CITY mutually desire to enter into this Indemnification Agreement on the terms set forth below

1. DEFINITIONS:

(a) APPLICANT means Fresno MSA Limited Partnership, a California limited partnership d/b/a Verizon Wireless, and its heirs, assigns or successors in interest;

(b) LAND USE APPROVAL, for purposes of this Agreement, shall mean any of the following: the grant of Conditional Use Permit No. C-09-58, and any categorical exemption or other determination by the CITY under the California Environmental Quality Act (CEQA) or other law that is made in conjunction with the Conditional Use Permit No. C-09-58. LAND USE APPROVAL does not include a ministerial permit.

(c) CITY shall mean the City of Fresno, a municipal corporation.

(d) PROJECT shall mean the use of the land authorized by the land use approval: C-09-58.

2. HOLD HARMLESS AND INDEMNIFICATION RELATED TO LAND USE APPROVAL

To the furthest extent allowed by law, APPLICANT shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and

damages (whether statutory, in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City in connection with any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) arising from, resulting from, or in connection with any CITY action in granting, issuing or approving the LAND USE APPROVAL. Applicant's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The foregoing notwithstanding, nothing in this agreement shall restrict or impair the right of APPLICANT to seek any appropriate remedy against CITY for any denial of the LAND USE APPROVAL, or any unlawful condition or exaction imposed in connection with the LAND USE APPROVAL. Furthermore, nothing in this agreement limits or restricts the ability of the City to defend itself against any legal claims arising out of its consideration of the LAND USE APPROVAL including the assertion of any appropriate affirmative defenses to such claims.

3. NOTIFICATIONS AND COOPERATION BY CITY:

CITY shall notify APPLICANT within a reasonable period of time of its receipt of any demand, claim, action, proceeding, or litigation in which CITY is to be indemnified and held harmless by APPLICANT. As a material condition of Applicant's obligations hereunder, if CITY requests that APPLICANT defend CITY, it shall notify APPLICANT in

writing within a reasonable period of time of its receipt of any such demand, claim, action, proceeding, or litigation and CITY shall cooperate fully in such defense.

APPLICANT shall have the right to select the attorney or attorneys who will defend the CITY. However, the CITY shall have the right to approve the counsel selected by Applicant, which approval shall not be unreasonably withheld. APPLICANT further agrees to be fully responsible for any and all costs and attorney's fees generated by said attorney(s) in the defense of CITY in any claim, demand, action, proceeding or litigation arising out of the LAND USE APPROVAL.

4. CITY'S PARTICIPATING IN DEFENSE:

Nothing contained herein shall prohibit CITY, in its sole discretion, from participating in the defense of any demand, claim, action, proceeding, or litigation over and above representation by outside counsel, or from participating in the defense of any demand, claim, action, proceeding, or litigation. If CITY elects to also defend, it shall do so in good faith and at its own expense. In no event shall CITY'S participation in the defense of any demand claim, action, proceeding, or litigation affect the obligations imposed upon APPLICANT in section 2 of this Agreement.

5. REIMBURSEMENT OF CITY'S COSTS RE: ADMINISTRATIVE RECORD:

Without limiting the CITY'S rights under paragraph 2 herein above, APPLICANT agrees to reimburse the CITY for its actual, reasonable cost incurred, including, but not limited to, CITY staff and attorney time expended for certifying and/or preparing the administrative record in connection with and proceedings related to the subject matter of

this Indemnification Agreement. APPLICANT shall pay such cost to CITY before receiving such administrative record. If the applicable law requires the petitioner, plaintiff or other party besides APPLICANT or CITY to pay the cost of certifying and/or preparing the administrative record, APPLICANT will still be responsible for reimbursing the CITY for any reasonable costs incurred by the City in preparing and/or certifying the Administrative Record that the City was not legally able to recover from the Petitioner, Plaintiff or other party. To the extent administrative record reimbursement and related costs are recovered in any litigation by the CITY, APPLICANT shall be reimbursed to the extent any such recovery is made as cost recovery items.

6. TERMINATION OF AGREEMENT:

(a) This Indemnification Agreement may be terminated only upon the following conditions:

(i) The parties agree to terminate this Indemnification Agreement by their express, mutual written consent; or

(ii) The APPLICANT petitions the Fresno City Council to terminate this Indemnification Agreement by providing to the Council a written opinion of APPLICANT's legal counsel and the Fresno City Council, in its sole discretion, determines that termination of this Indemnification Agreement is in the best interest of the public and the CITY. It is understood and agreed that the CITY, in making such determination of whether to terminate this Indemnification Agreement, may reasonably rely upon said opinion of APPLICANT's legal counsel.

(b) If this Indemnification Agreement is terminated as provided above, the CITY shall execute a written release of APPLICANT's obligations under this

Indemnification Agreement. It shall be APPLICANT's responsibility to record such document with the office of the Recorder of the County of Fresno.

7. ATTORNEY'S FEES:

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

8. SEVERABILITY:

If any provision of this Agreement is determined to be invalid in a final judgment by a court of competent jurisdiction, each and every other provision hereof shall remain in full force and effect.

9. CONSTRUCTION OF CONTRACT:

The parties hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this agreement, for which reason this agreement shall not be construed against any party as the drafter thereof.

* * *

IN WITNESS WHEREOF, APPLICANT and CITY hereby execute this

Agreement.

DATED: _____

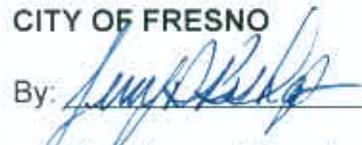
APPLICANT:

Fresno MSA Limited Partnership,
a California limited partnership
d/b/a Verizon Wireless
By: Cellco Partnership, its general partner

By: 
Name Walter L. Jones, Jr.
Title Area Vice President Network
12/7/09

DATED: 12/15/09

CITY OF FRESNO

By: 
Planning and Development
Department

ATTEST:

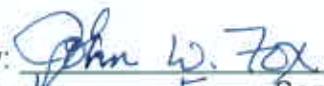
REBECCA E. KLISCH
CITY CLERK

By: 
Deputy 12/15/09

Approved As To Form
By: SC
Shannon Champion
Sr. Counsel
Verizon Wireless

APPROVED AS TO FORM:

JAMES C. SANCHEZ
CITY ATTORNEY

By: 
John W. Fox, Senior Deputy
Date: 12/14/2009