CITY OF TOLEDO **AGENDA**

City Council Chambers
206 N. Main Street
Toledo, Oregon 97391
6:00 p.m.

TOLEDO CITY COUNCIL
Work Session
October 9, 2018

1. Call to Order

2. Visitors/Public Comment

(The public comment period provides the public with an opportunity to address the City Council regarding items not on the agenda. Please limit your comments to five (5) minutes).

3. Discussion and Information Items

- Committee Updates
- Review Draft Agreement for sale of Cell Tower Easement
- Update on Mutual Agreement and Order with the Department of Environmental Quality
- Review outdoor event permit street closure request – Main Street Halloween Trick or Treat hosted by Toledo Chamber of Commerce

4. Reports and Comments

- Department Reports
- City Manager's Report
- Council Comments
- Mayor Comments

5. Adjournment

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting by calling city offices at (541) 336-2247.

OPTION AGREEMENT TO PURCHASE COMMUNICATIONS EASEMENT

THIS AGREEMENT (this ***"Option Agreement"***) is made effective as of the latter signature date hereof (the "***Option Effective Date***") by and between **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** ("***Buyer***") and **City of Toledo, Oregon**, **a municipal corporation** ("***Seller***") (Buyer and Seller being collectively referred to herein as the "***Parties***").

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

1. Seller hereby grants to Buyer an exclusive option (the "***Option***") to purchase a perpetual, exclusive communications easement and perpetual, non-exclusive access and utility easement (collectively, the ***"Easements"***), which Easements shall be memorialized in an easement agreement, the form and substance of which shall be substantially similar to the agreement attached hereto as **Exhibit A** and incorporated herein by reference (the "***Easement Agreement***"). The Easement Agreement shall grant, convey, and transfer to Buyer certain rights as described in the Easement Agreement over, across, in, through and under that certain real property owned by Seller in the County of Lincoln, State of Oregon (the "***Premises***"), and on which Buyer currently leases or subleases land from Seller pursuant to the terms of that certain Option and Lease Agreement dated October 8, 1996 (as the same may have been amended and modified from time to time, the "***Lease***"). The Seller shall also assign to Buyer all of Seller's right, title and interest in the Lease, including, but not limited to, Seller's right to collect any rent as described in the Lease. The Buyer shall have the sole, exclusive and absolute right to exercise the Option as provided herein. Seller hereby represents and warrants that it has the full power and authority to enter into this Option Agreement and the person(s) executing this Option Agreement on behalf of Seller, as the case may be, have the authority to enter into and deliver this Option Agreement on behalf of Seller. If requested by Buyer, Seller shall execute a resolution and consent affidavit prepared by Buyer evidencing Seller's authorization to execute and deliver this Option Agreement and to consummate the transactions contemplated herein, and Seller must, in all events, demonstrate, in Buyer's sole and absolute discretion, the person(s) executing this Option Agreement on behalf of Seller, have the authority to enter into and deliver this Option Agreement on behalf of Seller.

2. Subject to the terms of this Option Agreement, Buyer may exercise the Option by countersigning the Easement Agreement and paying to Seller an amount equal to **Three Hundred Ninety Five Thousand and 00/100 Dollars** (**$395,000.00**) [the "***Purchase Price***"] by check or by wire transfer of funds. The day on which payment is made to Seller is referred to herein as the "**Closing**". Buyer shall have the right to deduct from the Purchase Price, on a prorated basis, any prepaid monthly and/or annual rental payments made pursuant to the Lease, which are attributable to the period subsequent to the first day of the next calendar month following the date of Closing. Seller agrees to accept the Purchase Price as full and final compensation for conveying the Easements to Buyer. The Purchase Price shall be paid to, and all taxable income shall be reported by, **City of Toledo**. From and after the Option Effective Date, Seller shall not (and hereby agrees not to) solicit or accept any offers to purchase, lease, license, or otherwise transfer, convey, and/or assign any easement or other interests, rights, and/or title in and/or to all or any portion of the Premises or the Lease, or continue negotiations with other potential purchasers or other third parties with respect to the same, until the Termination Date (as defined below). Notwithstanding anything to the contrary herein, the Seller hereby agrees and acknowledges that the Purchase Price may be tendered by American Tower Delaware Corporation, a Delaware Corporation (or an affiliate or subsidiary thereof).

3. The Parties shall use best efforts to close the transaction contemplated herein within ninety (90) days of the Option Effective Date. Unless otherwise agreed to in writing by the Parties, this Option Agreement shall automatically terminate upon the earlier of the date of Closing or the 180th day following the Option Effective Date (said date being referred to herein as the "***Termination Date***"). Between the Option Effective Date and the sooner of the date of Closing or Termination Date, Buyer and its agents, employees, contractors, and designees may hereafter enter the Premises for the purposes of inspecting, surveying or otherwise evaluating the Premises to determine whether Buyer will, in its sole and absolute discretion, exercise the Option. Seller shall provide Buyer with any reasonable documentation requested by Buyer to facilitate payment to Seller or to otherwise assist in expediting Buyer's completion of its due diligence. If all or any portion of the Premises is encumbered by a mortgage or other security

instrument, Seller agrees to obtain a Non-Disturbance Agreement ("***NDA***") from the applicable lender(s) on a form to be provided by Buyer. If, despite Seller's best efforts, Seller is unable to obtain the NDA, Seller may request a risk assessment to determine whether Buyer will exercise the Option without an NDA, in which case Seller shall provide Buyer with authorization to verify Seller's credit worthiness and any additional documentation and/or information requested by Buyer in connection with such risk assessment.

4. Seller shall execute and deliver to Buyer the Easement Agreement, together with any other documents reasonably necessary for Buyer to record the Easement Agreement with the appropriate recorder's office and to obtain title insurance. In the event Seller executes and delivers the Easement Agreement to Buyer prior to Closing, said documents shall be held in escrow by Buyer until the earlier of Closing or termination of this Option Agreement as provided hereunder.

5. Seller hereby acknowledges and agrees that Buyer has not made any representations or warranties to Seller, including, without limitation, Buyer's likelihood of exercising the Option or the tax implications of the contemplated transaction, and the Parties further agree that all terms and conditions of the Option Agreement are expressly stated herein.

6. ~~The Parties agree and intend for this Option Agreement to be a legally binding contract and for the terms of this Option Agreement (as well as any information furnished to Seller by Buyer in connection herewith) to remain confidential. Except for Seller's family, attorney or broker, if any, or if required pursuant to a court action or applicable law, Seller shall not disclose the terms of this Option Agreement without the prior written consent of Buyer, which may be withheld or conditioned in Buyer's sole and absolute discretion. This provision shall survive Closing and/or the termination of this Option Agreement~~.

7. This Option Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Option Agreement by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Option Agreement by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Option Agreement by all Parties to the same extent as an original signature. This Option Agreement shall be governed and construed by the laws of the State or Commonwealth in which the Premises is located without regard to the conflicts of laws provisions of such State or Commonwealth. Buyer may assign its rights, title, and interest in and to this Option Agreement to an affiliate or subsidiary of Buyer without the consent or approval of (or notice to) Seller.

8. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Seller at: City of Toledo, P.O. Box 220, Toledo, OR 97391; to Buyer at: Verizon Wireless, Attn: Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; <u>with copy to</u>: American Tower Land Management, 10 Presidential Way, Woburn, MA 01801; and <u>with copy to</u>: American Tower Legal Department, 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

9. Unless extended by Buyer, in Buyer's sole and absolute discretion, this Option Agreement shall automatically become null and void and of no further force and effect if it is not executed by Seller and actually received by Buyer on or before October 31, 2017.

[SIGNATURES FOLLOW ON FOLLOWING PAGES]

BUYER:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By: American Tower Delaware Corporation, a Delaware Corporation
Its: Attorney-in-Fact

Signature: ______________________________
Print Name:_____________________________
Title:__________________________________
Date: _________________________________

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

SELLER:

City of Toledo, Oregon,
a municipal corporation

Signature: ____________________________
Print Name: ___________________________
Title: ________________________________
Date: ________________________________

EXHIBIT A

[EASEMENT AGREEMENT TO FOLLOW]

Prepared by and Return to:
Attorney, Carmen A. Picillo, Land Management
Site No: 82806
Site Name: TOLEDO OR
c/o American Tower
10 Presidential Way
Woburn, MA 01801

(Recorder's Use Above this Line)

STATE OF OREGON

Assessor's Parcel No: R362893

COUNTY OF LINCOLN

EASEMENT AND ASSIGNMENT AGREEMENT

This Easement Agreement ("***Agreement***") is made effective as of the latter signature date hereof (the "***Effective Date***") by and between **City of Toledo, Oregon**, **a municipal corporation** ("***Grantor***") and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** ("***Grantee***")(Grantor and Grantee being collectively referred to herein as the "***Parties***").

<u>RECITALS</u>

WHEREAS, Grantor is the owner of the real property described in **<u>Exhibit "A"</u>** attached hereto and by this reference made a part hereof (the "***Premises***''); and

WHEREAS, Grantee currently leases or subleases a portion of the Premises from Grantor for the purpose of operating or otherwise managing a communications facility; and

WHEREAS, Grantee and/or its affiliates and other parties named therein, entered into a sublease agreement with American Tower Delaware Corporation, a Delaware Corporation (or its parents, affiliates, or subsidiaries and other parties named therein, collectively, "***ATC***"), pursuant to which ATC subleases, manages, operates and maintains, as applicable, the communications facility, all as more particularly described in the sublease; and

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

WHEREAS, Grantor now desires to grant, and Grantee desires to receive, certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. <u>Grant of Easements</u>. Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants, bargains, sells, transfers and conveys to Grantee, its successors and/or assigns: (i) a perpetual, exclusive easement (the "***Exclusive Easement***") in and to that portion of the Premises more particularly described on **<u>Exhibit "B"</u>** attached

hereto and by this reference made a part hereof (the "***Exclusive Easement Area***"); and (ii) a perpetual, non-exclusive easement (the "***Access and Utility Easement***"; the Exclusive Easement and Access and Utility Easement, collectively, the "***Easements***") in and to that portion of the Premises more particularly described on **Exhibit "C"** attached hereto and by this reference made a part hereof (the "***Access and Utility Easement Area***"; the Access and Utility Easement Area and Exclusive Easement Area, collectively, the "***Easement Areas***"). The Easement Areas shall be used for the purposes set forth herein and shall expressly include that portion of the Premises upon which any of Grantee's fixtures, structures, equipment or other personal property are located as of the date of this Agreement.

2. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any portion of the Easement Areas for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming any interest under them.

4. Duration. The duration of this Agreement and the Easements granted herein (the "***Term***") shall be perpetual, unless Grantee provides written, recordable notice of Grantee's intent to terminate this Agreement and the Easements described herein, in which event this Agreement, the Easements, and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. For the avoidance of doubt, Grantee may, in its sole and absolute discretion, unilaterally terminate this Agreement, the Easements, and all of Grantee's obligations hereunder without the approval of or consent of Grantor as provided in the immediately preceding sentence.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneously with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term.

6. Grantor's Use of Grantee's Tower. Grantee hereby acknowledges and agrees that Grantor may utilize portions of the communications facility for Grantor's use at no cost to Grantor; provided, however, Grantor may not utilize such portions of the Exclusive Easement Area unless Grantor and Grantee first enter into a mutually agreeable agreement for Grantor's use, provided, however, that the Grantor's use does not interfere with the Grantee's or Permitted Parties (as defined below) use.

7. Use of Easement Areas.

a. Exclusive Easement. The Exclusive Easement Area may be used by Grantee and any of its affiliates, customers, tenants, subtenants, lessees, licensees, successors, and/or assigns, specifically including, without limitation, ATC, together with any of the employees, contractors, consultants, and/or agents of the foregoing (collectively, the "***Permitted Parties***") for the purposes of installing, constructing, maintaining, operating, modifying, repairing and/or replacing improvements, equipment, structures, fixtures, antennae and other personal property as Grantee may deem necessary or appropriate, which may be located on or in the Exclusive Easement Area from time to time, for the facilitation of communications and other related uses. Any such property, including any equipment, structures, fixtures and other personal property currently on or in the Exclusive Easement Area, shall not be deemed to be part of the Premises, but instead shall remain the property of Grantee or the applicable Permitted Parties. At any time during the Term, Grantee and/or any applicable Permitted Parties may remove their equipment, structures, fixtures and other personal property from the Easement Areas. Grantee may make, without the consent or approval of Grantor, any improvements, alterations or modifications to the Exclusive Easement Area as are deemed appropriate by Grantee, in its sole and absolute discretion. Grantee shall have the unrestricted and exclusive right, exercisable without the consent or approval of Grantor, to lease, sublease, license, or sublicense any portion of the Exclusive Easement Area, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement Area for any reason and shall not disturb Grantee's nor any Permitted Parties' right to use the Exclusive Easement Area in any manner. Grantee may, at Grantee's sole and exclusive option, construct a fence around all or any part of the Exclusive Easement Area and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement Area.

b. Access and Utility Easement. The Access and Utility Easement shall be used by Grantee and the Permitted Parties for pedestrian and vehicular (including trucks) ingress and egress to and from the Exclusive Easement Area at all times during the Term on a seven (7) days per week, twenty-four (24) hours per day basis. Grantee shall have the non-exclusive right to construct, reconstruct, add, install, improve, enlarge, operate, maintain and remove overhead and underground utilities, including, without limitation, electric, water, gas, sewer, telephone, fiber and data transmission lines (including wires, poles, guys, cables, conduits and appurtenant equipment) in, on, or under the Access and Utility Easement Area in order to connect the same to utility lines located in a publicly dedicated right of way. Notwithstanding the foregoing, Grantor shall not in any manner prevent, disturb, and/or limit access to the Access and Utility Easement Area or use of the Access and Utility Easement by Grantee or any of the Permitted Parties, and Grantor shall not utilize the Access and Utility Easement Area in any manner that interferes with Grantee's or any of the Permitted Parties' use of such area as expressly provided herein. Grantor agrees to maintain the existing access road in a manner sufficient to allow pedestrian and vehicular access to the Exclusive Easement Area at all times except that Grantee shall be responsible for repairing any damage caused by the use of the road by Grantee and/or the Permitted Parties, reasonable wear and tear excepted. In the event the Access and Utility Easement Area cannot, does not, or will not fully accommodate the access and utility needs of the Grantee during the Term, or if it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement Area are not encompassed within the description of the Access and Utility Easement Area as set forth herein, Grantor and Grantee agree to amend the description of the Access and Utility Easement Area provided herein to include the description of such areas and/or to relocate the Access and Utility Easement, for no additional consideration, and to create a revised legal description for the Access and Utility Easement Area that will reflect such relocation. The Access and Utility Easement and the rights granted herein with respect to the same shall be assignable by Grantee to any public or private utility company to further effect this provision without the consent or approval of Grantor.

8. Assignment. Grantee may assign this Agreement, in whole or in part, to any person or entity at any time without the prior written consent or approval of, or notice to, Grantor, including, but not limited to, an affiliate of Grantee. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all of its obligations, duties and liabilities hereunder.

9. Covenants; Representations; Warranties.

a. Grantor hereby represents and warrants to Grantee the following: (i) Grantor is the owner in fee simple of the Easement Areas, free and clear of all liens and encumbrances; (ii) Grantor has the full authority and power to enter into and perform its obligations under this Agreement, and, to the extent applicable, the person or persons executing this Agreement on behalf of Grantor have the authority to enter into and deliver this Agreement on behalf of Grantor; (iii) to the best of Grantor's knowledge, there is no condemnation proceeding pending or threatened against all or any portion of the Premises; (iv) no claim, litigation, proceeding, or investigation is pending or, to the best of Grantor's knowledge, threatened against Grantor or all or any portion of the Premises that could affect Grantee's use of the Easement Areas as contemplated herein; (v) Grantor has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors or suffered the appointment of a receiver to take possession of substantially all of its assets; (vi) to the best of Grantor's knowledge, the Premises is in compliance with all applicable laws, ordinances and regulations, including those governing Hazardous Materials (as defined below); (vii) to the best of Grantor's knowledge, there is no proceeding pending or threatened to change the zoning status of the Premises; (viii) Grantor is not indebted to any party, including, without limitation, any local or state or the federal government for which a lien or claim of lien has been or could be asserted against the all or any portion of the Premises; (ix) there are no leases, written or oral, affecting all or any portion of the Easement Areas, except for any agreements entered into between Grantee or its affiliates and third parties; (x) the Easement Areas do not constitute or form a part of Grantor's homestead, or, in the event that the Easement Areas are located upon homestead property, then Grantor's spouse (if applicable) shall join in the execution of this Agreement; (xi) Grantor has paid all taxes, assessments, charges, fees, levies, impositions and other amounts relating to the Premises due and payable prior to the Effective Date; and (xii) Grantee shall peaceably and quietly hold, exercise, and enjoy the Easements during the Term without any hindrance, molestation or ejection by any party whomsoever.

b. During the Term, Grantor shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Premises, including the Easement Areas. Grantee hereby agrees to reimburse Grantor for any personal property taxes in addition to any increase in real property taxes levied against the Premises, to the extent both are directly attributable to Grantee's improvements on the Easements (but not, however, taxes or other assessments attributable to periods prior to the date of this Agreement), provided, however, that Grantor must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Grantee) of such personal property taxes or real property tax increase to Grantee along with proof of payment of same by Grantor. Anything to the contrary notwithstanding, Grantee shall not be obligated to reimburse Grantor for any applicable taxes unless Grantor requests such reimbursement within one (1) year after the date such taxes became due. Grantor shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Grantee from time to time. Subject to the requirements set forth in this Section, Grantee shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Grantor. Grantee shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Grantee. If Grantor fails to pay when due any taxes affecting the Premises as required herein, Grantee shall have the right, but not the obligation, to pay such taxes on Grantor's behalf and: (i) deduct the full amount of any such taxes paid by Grantee on Grantor's behalf from any future payments required to be made by Grantee to Grantor hereunder; (ii) and demand reimbursement from Grantor, which reimbursement payment Grantor shall make within ten (10) days of such demand by Grantee; and/or (iii) collect from Grantor any such tax payments made by Grantee on Grantor's behalf by any lawful means.

c. Without Grantee's prior written consent, which consent may be withheld or conditioned in Grantee's sole and absolute discretion, Grantor shall not (i) cause any portion of the Easement Areas to be legally or otherwise subdivided from any master tract of which it is currently a part, or (ii) cause any portion of the Easement Areas to be separately assessed for tax purposes.

d. Grantor shall not suffer, grant, create, transfer, or convey (or cause to be suffered, granted, created, transferred, or conveyed) any claim, lien, encumbrance, easement, interest, restriction or other charge or exception to title to the Easement Areas or any other portion of the Premises that would adversely affect Grantee's use of the Easement Areas as contemplated herein.

e. Grantor shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Premises in violation of any Environmental Laws (as defined below). As used herein, "***Hazardous Materials***" shall mean any: contaminants, oils, asbestos, PCBs, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which are required or the maintenance of which are prohibited or regulated by any federal, state, or local governmental authorities having jurisdiction over all or any portion of the Premises. As used herein, "***Environmental Laws***" shall mean any laws, regulations, ordinances, and/or administrative orders applicable to all or any portion of the Premises, which govern Hazardous Materials.

f. Grantee shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Easement Areas in violation of any Environmental Laws.

g. Grantor hereby agrees to and does indemnify and shall defend and hold harmless Grantee and its officers, directors, shareholders, agents, contractors, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein.

h. The representations, warranties, covenants, agreements, and indemnities contained in this section shall survive the execution and delivery of this Agreement indefinitely.

10. Non-Disturbance. During the Term, Grantor will not improve or alter the Premises or grant, convey, transfer, or otherwise enter into any other easement, ground lease, lease, license, or similar agreement or contract with respect to any portion of the Premises if the same would interfere with, disturb, limit, or impair Grantee's permitted use of the Easement Areas. Grantor hereby acknowledges that Grantee and the Permitted Parties are currently utilizing the Exclusive Easement Area for the purpose of transmitting and receiving communication signals, including, but not limited to, wireless telecommunications signals. Grantor and Grantee recognize and acknowledge that Grantee's use of the Easement Areas set forth in this Agreement would be materially frustrated if the communications signals were blocked or otherwise interfered with, or if access and/or utilities to and from the Exclusive Easement Area were inhibited, even if temporarily. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing and shall promptly undertake any remedial action necessary to comply with the terms and provisions of this Section. Grantee shall have the express right, among others, to seek an injunction to prevent any of the activities prohibited by this Section.

11. Grantee's and ATC's Securitization Rights; Estoppel. Grantor hereby consents to the granting by Grantee and/or ATC of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "***Security Interest***") in Grantee's (or ATC's) interest in this Agreement and all of Grantee's (or ATC's) property and fixtures attached to and lying within the Exclusive Easement Area and further consents to the exercise by Grantee's (or ATC's) mortgagee ("***Grantee's Mortgagee***") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Grantor shall recognize the holder of any such Security Interest of which Grantor is given prior written notice (any such holder, a "***Holder***") as "Grantee" hereunder in the event a Holder succeeds to the interest of Grantee or ATC hereunder by the exercise of such remedies. Grantor further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Grantee, ATC or Holder.

12. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

To Grantor: City of Toledo
P.O. Box 220
Toledo, OR 97391

With copy to: American Tower Delaware Corporation
10 Presidential Way
Woburn, MA 01801
Attn: Land Management

With copy to: American Tower Delaware Corporation
116 Huntington Avenue
Boston, MA 02116
Attn: Legal Department

Grantor or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

13. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall automatically be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

14. Miscellaneous. This Agreement shall be recorded at the sole expense of Grantee and shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth. The captions and headings herein are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions, scope or intent of this Agreement. This Agreement and any other documents executed in connection herewith , constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressly set forth herein. Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this Agreement. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement that is signed by each of the parties hereto.

15. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee in this Agreement, or in any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantor or Grantee.

16. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Grantor and Grantee are not signatories to the original or the same counterpart.

17. Severability. Should any part or provision of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement, and they shall remain in full force and effect and this Agreement shall be construed as if such part or provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the parties shall execute a reasonably acceptable ground lease between Grantor, as landlord, and Grantee, as tenant (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth herein. The parties agree that no additional consideration shall be paid to Grantor for entering into such a lease and said lease must (a) expressly provide that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the leased premises or to permit sublessees or licensees to utilize the non-exclusive easement for access and utilities, (b) be for a term of ninety-nine (99) years, or as long as permitted by applicable law.

18. Attorney's Fees. If there is any legal action or proceeding between Grantor and Grantee arising from or based on this Agreement, the non-prevailing party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, actually incurred by such prevailing party in connection with such proceeding and in any appeal in related thereto. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

19. Government Approvals/Applications. Grantor hereby covenants and agrees that (a) neither Grantor nor any affiliate of Grantor shall at any time oppose in any manner (whether at a formal hearing, in written documentation, or otherwise) any zoning, land use or building permit application of Grantee and/or ATC and (b) Grantor shall promptly cooperate with Grantee and/or ATC in making application for and/or otherwise obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's (or ATC's) intended use of the Easement Areas.

20. Assignment of Ground Lease. The Parties hereby acknowledge and agree that the Premises is currently subject to that certain Option and Lease Agreement dated October 8, 1996 originally by and between City of Toledo, Oregon, a municipal corporation and US West NewVector Group, Inc. (as the same may have been amended from time to time, collectively, the "***Lease***"), and as evidenced by that certain memorandum of lease recorded in the records of Lincoln County, Oregon. Grantor hereby acknowledges and agrees that there currently exists no default under the Lease, and no conditions that, with the passage of time, would constitute a default under the Lease. Grantor hereby assigns, transfers, sets over and delivers to Grantee all of Grantor's rights, title and interests in, to, and/or under the Lease, including, without limitation, all rents and other monies due to Grantor under the Lease from and after the Effective Date, and Grantee hereby accepts and assumes all of the obligations which are the responsibility of the landlord under the Lease from and after the Effective Date. Grantor hereby releases and forever remises Grantee from all claims arising under the Lease. Grantor hereby indemnifies and holds Grantee harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) which are actually asserted, instituted, assessed, incurred, and/or sustained against or by Grantee and/or the Permitted Parties with respect to or in connection with matters arising or accruing under the Lease prior to the Effective Date. Grantee hereby indemnifies and holds Grantor harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) which are actually asserted, instituted, assessed, incurred, and/or sustained against or by Grantor with respect to or in connection with matters arising or accruing under the Lease from and after the Effective Date.

21. Further Acts; Attorney-In-Fact. Grantor, at Grantee's sole cost and expense, shall cooperate with Grantee and/or ATC, as the case may be, in executing any documents necessary to protect Grantee's (and ATC's) rights under this Agreement or Grantee's (and ATC's) use of the Easements and to take such action as Grantee (or ATC) may be reasonably required to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee and ATC as Grantor's

attorney-in-fact coupled with an interest to prepare, execute, deliver, and submit land-use, building permit and zoning applications related to Grantee's (and ATC's) permitted use of the Easement Areas, on behalf of Grantor, to federal, state and local governmental authorities.

22. Survey. Grantee may elect, at Grantee's expense, to cause a boundary, as-built or similar survey of all or any portion of the Easement Areas (the "***Survey***") to be prepared by a surveyor duly licensed under the laws of the state in which the Premises is located. Grantor further agrees that, Grantee may elect, in Grantee's sole and absolute discretion, to replace Exhibit B and Exhibit C with a revised Exhibit B and Exhibit C depicting and/or describing the Exclusive Easement Area and Access and Utility Easement Area, as applicable, in accordance with the Survey prepared at Grantee's election.

23. Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL GRANTOR OR GRANTEE BE LIABLE TO THE OTHER FOR, AND GRANTOR AND GRANTEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES.

24. Condemnation. In the event Grantor receives notification of any condemnation proceeding affecting the Easement Areas, or any portion thereof, Grantor shall provide notice of the proceeding to Grantee within forty-eight (48) hours. If a condemning authority takes all of the Easement Areas, or any portion thereof, Grantee shall be entitled to pursue Grantee's own award in the condemnation proceeds, which for Grantee will include, where applicable, the value of its communications facility, moving expenses, consideration paid to Grantor for the Easements, and business dislocation expenses.

[*END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

GRANTOR:	**2 WITNESSES**
City of Toledo, Oregon **a municipal corporation**	
Signature: ______________________________	Signature: ______________________________
Print Name: _____________________________	Print Name: _____________________________
Title: __________________________________	
Date: __________________________________	Signature: ______________________________
	Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of ______________________

County of _________________________

On this ____ day of ______________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: __________________________
My commission expires: ________________ [SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

GRANTEE:

Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

By: American Tower Delaware Corporation, a Delaware corporation
Its: Attorney-in-Fact

Signature: ______________________________
Print Name: ______________________________
Title: ___________________________________
Date: ___________________________________

2 WITNESSES

Signature: ______________________________
Print Name: ______________________________

Signature: ______________________________
Print Name: ______________________________

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this the ____ day of _________________ 201___, before me, the undersigned Notary Public, personally appeared ________________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
My Commission Expires: ____________________________ {Seal}

<u>Attachments</u>:
Exhibit "A" – Premises
Exhibit "B" – Exclusive Easement Area
Exhibit "C" – Access and Utility Easement Area

Exhibit "A"
The Premises

This Exhibit A may be replaced by descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Premises

Beginning at a point that is South 542.30 feet and East 1026.00 feet from the Northwest corner of Section 8, Township 11 South, Range 10 West of the Willamette Meridian, in Lincoln County, Oregon; thence East 340 feet, more or less, to the East line of the Northwest quarter of the Northwest quarter of said Section 8; thence South along the East line of said Northwest quarter of the Northwest quarter to the Northerly boundary of County Road No. 565; thence Southwesterly and Northwesterly along said Northerly boundary to a point that is South of the point of beginning; thence North 450 feet, more or less, to the point of beginning.

<u>EXHIBIT "B"</u>

Exclusive Easement Area

This Exhibit B may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Exclusive Easement Area, and if applicable, guy wire and guy anchor easements

<u>EXHIBIT "C"</u>

Access and Utility Easement Area

This Exhibit C may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Access and Utility Easement Area

All existing utility and access easements from Exclusive Easement Area to public right of way including but not limited to:

Instructions for completing the Resolution and Consent Affidavit

IMPORTANT INFORMATION BELOW

In order to avoid delays in the completion of this transaction, the Resolution and Consent Affidavit must be signed by ***ALL*** Members, Partners, Directors, Shareholders, Officers or Trustees of the organization. Section 6 of this form allows for the organization to appoint one person to sign the remaining documents but ***ONE HUNDRED PERCENT (100%)*** of the ownership or voting interest of the organization must sign this first. Failure to comply with these instructions or properly indicate the percentage of ownership and/or voting interest will result in delays and could require the documents to be re-executed. If you have any questions, please contact your land lease representative.

Prepared by and Return to:
Attorney Carmen A. Picillo, Land Management
c/o American Tower
10 Presidential Way
Woburn, MA 01801
Tax Parcel ID No: R362893

RESOLUTION AND CONSENT AFFIDAVIT

City of Toledo, Oregon, a municipal corporation

Be it known that, under the pains and penalties of perjury, the undersigned Members, Partners, Directors, Shareholders, Officers or Trustees (collectively "***Affiants***") of the above referenced entity (the "***Seller***"), hereby declare and resolve the following:

1. Seller (*or its predecessor in interest*) has leased or subleased a portion of land to **Verizon Wireless (VAW) LLC d/b/a Verizon** (*or its predecessor in interest*, hereinafter "***Buyer***") under an Option and Lease Agreement originally dated October 8, 1996 (as the same may have been amended, the "***Lease***").

2. Seller and Buyer desire to enter into an Option Agreement to Purchase Communications Easement and an Easement and Assignment Agreement (collectively, the "***Easement***") which will grant Buyer a perpetual easement in, over, under, across and through land owned by the Seller and Buyer will provide a one-time, lump-sum payment to Seller as more fully set forth in the Easement.

3. Seller is a legal entity and in full compliance with all applicable laws required by the state in which Seller is located and originally created, or if not in compliance, the Affiants listed hereunder are all the only legal and equitable interest owners of Seller and are the only Members, Partners, Directors, Shareholders or Trustees of Seller.

4. The Affiants hereby consent to the Easement and all provisions therein and declare that Seller is hereby authorized to enter into the Easement with Buyer.

5. The Affiants also declare that they have full legal authority to bind Seller under the laws of the State or Commonwealth upon which Seller's property is located and Affiants have the full authority to execute any and all agreements on behalf of Seller and to nominate individuals to act on Seller's behalf.

6. The Affiants hereby nominate the below listed individual (the "***Nominee***") as attorney-in-fact to execute the Easement on behalf of Affiants and Seller, as well as any other documents necessary to complete the Easement transaction and comply with the provisions therein. The Nominee shall have full power and authority to act on behalf of Affiants and on behalf of Seller for the sole purpose of completing the Easement transaction. In

addition, the Nominee shall have full authority to direct the manner in which all payments will be made by Buyer to Seller pursuant to the Easement, including identifying which bank accounts to transfer funds to in the event a wire payment is made by Buyer.

NOMINEE: (Print Name) ______________________________
(Address) ______________________________
____

7. This document shall become effective as of the date of the last notarized signature of Affiants listed below.

8. Buyer and any third party may rely on a faxed, scanned or otherwise electronically reproduced fully-executed copy of this document as if it were an original.

9. This document can only be amended by addendum or other instrument that is fully executed and notarized by all Affiants listed hereunder.

[*SIGNATURE AND NOTARY PAGES NEXT*]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 1

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of ______________________

County of _________________________

On this ____ day of ______________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: __________________________
My commission expires: _______________ {Seal}

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 2

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of _____________________

County of ________________________

On this ____ day of _____________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: _________________________
My commission expires: _______________ {Seal}

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 3

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of _____________________

County of ________________________

On this ____ day of _____________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: _________________________
My commission expires: _______________ {Seal}

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 4

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of ______________________

County of _________________________

On this ____ day of ______________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: __________________________
My commission expires: ________________ {Seal}

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 5

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of ______________________

County of _________________________

On this ____ day of ______________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: __________________________
My commission expires: _______________

{Seal}

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW:

AFFIANT NO. 6

Signature: ______________________________
Print Name: _____________________________
Date: __________________________________

Title: (*circle one*) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: _______%

2 WITNESSES

Signature: ______________________________
Print Name: _____________________________

Signature: ______________________________
Print Name: _____________________________

WITNESS AND ACKNOWLEDGEMENT

State of ______________________

County of _________________________

On this ____ day of ______________________, 201___, before me, the undersigned Notary Public, personally appeared ____, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public
Print Name: __________________________
My commission expires: ________________ {Seal}

DISCLOSURE AND AUTHORIZATION FORM

RE: American Tower Site No: 82806
American Tower Site Name: TOLEDO OR

I, _____________________________________, ("***Grantor***") hereby authorize American Tower Corporation, its affiliates, subsidiaries, successors and/or assigns ("***ATC***") to obtain my credit report and any other personal financial information.

I understand that after ATC obtains and reviews my information and assesses the financial risks involved in entering a transaction with me, that ATC has the right, in its sole and absolute discretion, to refuse to enter into any contemplated transactions and that the financial investigation to be performed by ATC is no guarantee that a pending transaction will be approved by ATC.

My Social Security Number is: __________________________

GRANTOR:

Signature: ______________________________________
Print Name: _____________________________________
Date: ____

CITY OF TOLEDO
CITY COUNCIL INFORMATION

DATE INFORMATION CONSIDERED: October 9, 2018			
Ordinance ☐	**Resolution** ☐	**Motion** ☐	**Information** ☒
Date Prepared: October 4, 2018		**Dept.:** Public Works	
SUBJECT: DRAFT Mutual Agreement & Order (MAO) w/DEQ		**Contact Person for this Item:** Michael J Adams, Public Works Director	

INFORMATION BEFORE COUNCIL:

Consideration of DRAFT Mutual Agreement and Order (MAO).

FISCAL IMPACT:

Formal acceptance of final MAO with Department of Environmental Quality (DEQ) will require significant financial investment in the coming years. The information presented herein is an attempt to provide additional details and information to the City Council regarding this topic in its current DRAFT form.

COUNCIL GOAL: <u>Be fiscally responsible & maximize available revenue</u>
<u>Maintain and Improve public infrastructure and facilities</u>
<u>Assure and provide services that protect the public</u>.

BACKGROUND:

On December 27, 2005, the DEQ issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101713 (Permit) to the City of Toledo. The Permit authorizes the City to construct, install, modify or operate wastewater treatment control and disposal facilities (Facility) and discharge adequately treated wastewaters into the Yaquina River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on November 30, 2010, but is administratively extended as the City has made timely application for renewal.

Due to the current conditions of the sanitary sewer system, as well as the age and condition of the treatment plant facility, the City sometimes has difficulty maintaining compliance with the Permit during wet weather and heavy rain periods primarily due to excessive inflow and infiltration (I/I) of unwanted storm water leaking into the sewer system. As such, the City and DEQ have entered into negotiations of a legal agreement known as a MAO to settle pending and likely future violations in exchange for a schedule by the City to make improvements to the system.

The first draft of an MAO was created in August of 2017 and after some discussion between staff members of the City and DEQ, and after a presentation by DEQ at a Council work session January 9, 2018, the latest draft MAO version was presented to Council on September 11, 2018 at a regular scheduled work session for consideration. Also presented at that time was an anticipated timeline and potential project cost associated with meeting the timeline. After good discussion and consideration by the Council at the work session it was recommended this topic be brought forward at the next available regular City Council meeting for further discussion and consideration.

On September 12, 2018 staff communicated to DEQ what was discussed at the council work session and relayed City concerns regarding the financial impacts acceptance of the DRAFT MAO would have on the community. As such, staff submitted another revised MAO to be considered by DEQ as well as clarifying questions that need consideration as we attempt to move forward; the email and MAO revision has been attached for Council review.

On or about September 26, 2018, City received comment back from DEQ with a revised MAO per the earlier correspondence of September 12, 2018; it is attached for your review and is in "track-changes" mode so you can see the suggested changes DEQ is recommending.

You will also find a copy of the email attached from DEQ that indicates they will be providing an analysis for the comparison of having an MAO vs. not having an MAO. As of this writing the City has not yet received this analysis however it will be provided once we actually receive it.

OPTIONS:

A. Consider current DEQ revised MAO language and await DEQ response of cost comparison for having the MAO vs. not having the MAO.

   This option will allow additional time for Council to consider long-term implications of future MAO strategy and to identify priority project(s) for funding option identification and probable cost implications evaluations.

B. Identify additional MAO revisions and submit to DEQ for their consideration.

   Similar to the above option, this option will also allow additional time for Council to consider long-term implications of future MAO strategy and to identify priority project(s) for funding option identification and probable cost implications evaluations.

C. Other.

NEXT STEPS:

Upon consensus & direction of the council regarding this issue, Staff will prepare an appropriate RCA for an upcoming regular City Council meeting as determined by Council.

ATTACHMENT(S): Toledo Final Draft MAO09262018 – DEQ Tracked changes summary
DEQ Email 09262018 – Email correspondence of September 26, 2018 from DEQ.

PREPARED & SUBMITTED BY:

Michael Adams

Michael J Adams, Public Works Director

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:	)	MUTUAL AGREEMENT
	)	AND ORDER
CITY OF TOLEDO,	)	NO. WQ/M-WR-2017-211___
Permittee.	)	LINCOLN COUNTY
	)	

WHEREAS:

1. On December 27, 2005, the Department of Environmental Quality (DEQ) issued National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit Number 101713 (Permit) to the City of Toledo (Permittee). The Permit authorizes the Permittee to construct, install, modify or operate wastewater treatment control and disposal facilities (Facility) and discharge adequately treated wastewaters into the Yaquina River, waters of the state, in conformance with the requirements, limitations and conditions set forth in the Permit. The Permit expired on November 30, 2010, but is administratively extended as Permittee made timely application for renewal.

2. The Permit has the following requirements:

a. Schedule A, Condition (1)(a)(3)of the Permit states that the removal efficiency for biochemical oxygen demand (BOD_5) shall not be less than an 85% monthly average.

b. Schedule B, Condition (3)(a) of the Permit requires Permittee to submit an annual inflow and infiltration (I/I) report to DEQ by February 1 of each year.

c. Schedule F, Condition (B)(6)(c) of the Permit prohibits overflows.

d. Schedule F, Condition (B)(6)(e) of the Permit requires Permittee to report overflows to DEQ within 24 hours of becoming aware of the overflow.

3. Permittee has violated the Permit as follows:

a. According to its discharge monitoring reports, Permittee failed to meet the 85% removal efficiency for BOD_5 as follows:

Month	Reported BOD Removal Efficiency
December 2015	65
January 2016	82
November 2016	76
December 2016	84
January 2017	83
February 2017	84

b. Permittee submitted its 2014 I/I report on March 13, 2015, its 2015 I/I report on June 29, 2017, and its 2016 I/I report on February 16, 2017.

c. On January 2, 2018, the Permittee discharged approximately 45,000 gallons of municipal water containing raw sewage from a broken sewer pipe into a storm drain near Sturdevant Road, which then discharged into the Olalla Slough, which is waters of the state and a tributary to the Yaquina River.

d. Permittee failed to orally report the January 2, 2018 overflow to DEQ within 24 hours of becoming aware of the overflow.

4. DEQ and the Permittee recognize that until tasks in Paragraph 8 are completed, Permittee might continue to violate the BOD removal efficiency requirement at times and have sanitary sewer overflows.

5. DEQ and Permittee recognize that the Environmental Quality Commission has the authority to impose a civil penalty and to issue an abatement order for violations of Permit conditions. Therefore, pursuant to ORS 183.415(5), DEQ and Permittee wish to settle those past violations referred to in Paragraph 3 and address future violations referred to in Paragraph 4

(unless caused negligently, willfully or intentionally) in advance by this Mutual Agreement and Order (MAO).

6. The U.S. Environmental Protection Agency appropriately delegated the federal NPDES permitting program to DEQ, making DEQ the primary administrator and enforcer of the NPDES permits. DEQ believes that this MAO furthers the goals of the NPDES permitting program by ensuring progress towards compliance and is consistent with DEQ's goal of protecting human health and the environment. However, DEQ and Permittee recognize that this MAO does not eliminate the possibility of additional enforcement of Permit requirements by the U.S. Environmental Protection Agency or citizens under the federal citizen suit provisions.

7. This MAO is not intended to limit, in any way, DEQ's right to proceed against Permittee in any forum for any past or future violations not expressly settled herein.

NOW THEREFORE, it is stipulated and agreed that:

8. The Environmental Quality Commission shall issue a final order:

A. Requiring Permittee to comply with the following compliance order:

~~1. By no later than January 1, 2020 complete the Butler Bridge Pump Station and Force Main Project.~~

~~Gravity Sewer Collection System Improvements:~~

~~2.~~1. By no later than March 1, 2019, Permittee must update cost estimates and develop funding alternatives to implement Priority 1, 2, and 3 Projects identified in Appendix C of the 2014 Civil West Engineering Services Wastewater Facility Plan. These include the Butler Bridge slope, NW 6th Street, SE 10th Street, N Nye Street, E Graham Street, NE 12th Street, Alley Repair, Business 20, Manhole Rehab, SE 5th Street, Alder Way, and SE Alder Street projects (Priority 1, 2, and 3 Projects).

2. By no later than December 1, 2019, Permittee must submit documentation that all inflow sources (missing cleanout caps, roof drains, storm water cross connections, etc.) identified in the 2011 Inflow and Infiltration study have been eliminated.

3. By no later than January 1, 2020, Permittee must submit to DEQ documentation that the Butler Bridge Force Main Project has been completed.

~~3.~~4. By no later than March 1, 2020, Permittee must submit to DEQ a copy of the City's notice to proceed to the contractor for construction of Priority 1 Projects.

5. By no later than ~~December~~ November 1, 2020, Permittee must clean, television inspect, and smoke test the entire public wastewater collection system and submit a document to DEQ that includes a summary of the findings. The document must rate all deficiencies found using a nationally recognized system. ~~The document must also include a plan, schedule, and budget to address prioritized deficiencies~~.

6. By no later than December 1, 2020, Permittee must submit to DEQ documentation that the Priority 1 Projects are substantially complete.

~~4.~~7. By no later than June 1, 2021 Permittee must submit a new I/I study that includes a comparison of the wet weather flows before and after completion of the Priority 1 Projects and a statement as to whether the wastewater treatment plant has the capacity to treat projected peak flows. The document must also include a plan, schedule and budget to address deficiencies identified in the collection system evaluation described in Paragraph 8.A.5. above

~~5. By no later than May 1, 2021, Permittee must award bids and issue a notice to proceed for the Priority 1, 2, and 3 Projects.~~

~~6.~~8. ~~By no later than December 1, 2022, Permittee must submit documentation that the Priority 1, 2, and 3 Projects are substantially complete~~.

B. Requiring Permittee to meet the following waste discharge limitations, measured as specified in the Permit, until this MAO is terminated per paragraph 14 or 19.

OTHER PARAMETERS (year-round)	LIMITATIONS
BOD Removal Efficiency	When monthly average influent flow is greater than 2 MGD, must not be less than 65%. When monthly average influent flow is greater than 1.5 MGD but less than 2 MGD, must not be less than 75%.

C. Requiring Permittee, upon receipt of a written Penalty Demand Notice from DEQ, to pay the following civil penalties:

(1) $600 for each day of violation of the compliance order set forth in Paragraph 8(A).

(2) $100 for each violation of the waste discharge limitation set forth in Paragraph 8(B).

9. If any event occurs that is beyond Permittee's reasonable control and that causes or may cause a delay or deviation in performance of the requirements of this MAO, Permittee shall immediately notify DEQ verbally of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and

the timetable by which Permittee proposes to carry out such measures. Permittee shall confirm in writing this information within five (5) working days of the onset of the event. It is Permittee's responsibility in the written notification to demonstrate to DEQ's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite due diligence of Permittee. If Permittee so demonstrates, DEQ shall extend times of performance of related activities under this MAO as appropriate. Circumstances or events beyond Permittee's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or a consultant's failure to provide timely reports are not considered circumstances beyond Permittee's control.

10. The violations set forth in Paragraph 3 are expressly settled herein as follows:

A. For the violation of Schedule A, Condition (1)(a)(3) of the Permit Set forth in Paragraph 3(a) above, DEQ hereby assesses a civil penalty of $350. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated herein.

B. For the violation Schedule B, Condition (3)(a) of the Permit set forth in Paragraph 3(b) above, DEQ has not assessed a civil penalty.

C. For the violation of Schedule F, Condition (B)(6)(c) of the Permit set forth in Paragraph 3(c) above, DEQ hereby assesses a civil penalty of $1,800. The determination of the civil penalty is attached as Exhibit No. 2 and is incorporated herein.

D. For the violation of Schedule F, Condition (B)(6)(e) of the Permit set forth in Paragraph 3(d) above, DEQ hereby assesses a civil penalty of $1,800. The determination of the civil penalty is attached as Exhibit No. 3 and is incorporated herein.

E. The total civil penalty amount is $3,950.

11. Permittee and DEQ hereby waive any and all of their rights to any and all notices, hearing, judicial review, and to service of a copy of the final order herein. DEQ reserves the right to enforce this order through appropriate administrative and judicial proceedings.

12. Regarding the order set forth in Paragraph 8(A) above, Permittee acknowledges that Permittee is responsible for complying with that order regardless of the availability of any federal or state grant monies.

13. The terms of this MAO may be amended by mutual agreement of DEQ and Permittee.

14. DEQ may amend the compliance order and conditions, or terminate, this MAO upon finding that such modification or termination is necessary because of changed circumstances or to protect public health and the environment. DEQ shall provide Permittee a minimum of thirty (30) days written notice prior to issuing an Order amending or terminating the MAO. If Permittee contests the Order, the applicable procedures for conduct of contested cases in such matters shall apply.

15. This MAO shall be binding on the parties and their respective successors, agents, and assigns. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this MAO. No change in ownership or corporate or partnership status relating to the Facility shall in any way alter Permittee's obligations under this MAO, unless otherwise approved in writing by DEQ.

16. All reports, notices and other communications required under or relating to this MAO should be directed to Julie Ulibarri, DEQ Western Region Eugene Office, 165 East 7th Avenue, Eugene, Oregon, 97401, phone number 541-687-7437. The contact person for Permittee shall be Michael J. Adams, Public Works Director, City of Toledo, P.O Box 220, Toledo, Oregon, 97391, phone number 541-336-2247 ext. 2070.

17. Permittee acknowledges that it has actual notice of the contents and requirements of this MAO and that failure to fulfill any of the requirements hereof will constitute a violation of this MAO and subject Permittee to payment of civil penalties pursuant to Paragraph 8(C) above.

18. Any stipulated civil penalty imposed pursuant to Paragraph 8(C) shall be due upon written demand. Stipulated civil penalties shall be paid by check or money order made payable

to the "Oregon State Treasurer" and sent to: Business Office, Department of Environmental Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. Within 20 days of receipt of a "Demand for Payment of Stipulated Civil Penalty" Notice from DEQ, Permittee may request a hearing to contest the Demand Notice. At any such hearing, the issue shall be limited to Permittee's compliance or non-compliance with this MAO. The amount of each stipulated civil penalty for each violation and/or day of violation is established in advance by this MAO and shall not be a contestable issue.

19. This MAO shall terminate at the end of the day on the date the final compliance task in Paragraph 8A above is to be completed. However, Permittee remains liable for stipulated penalties for any violations of the MAO occurring during the period the MAO was in effect and demanded pursuant to Paragraph 18.

CITY OF TOLEDO,
PERMITTEE

________________________ ____

Date

Michael J. Adams
Public Works Director

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

____________________ ________________________________

Date

Kieran O’Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170

on behalf of the EQC pursuant to OAR 340-011-0505

Public Works Director

From:	ULIBARRI Julie <Julie.ULIBARRI@state.or.us>
Sent:	Wednesday, September 26, 2018 12:35 PM
To:	Public Works Director
Subject:	New MAO for the City's review
Attachments:	Toledo Draft MAO 09262018 (jdg).docx

Hello Mike,

Please see the attached MAO. The Priority 2 and 3 projects were removed. The submission of a new I/I study is now being required by June 1, 2021. Please review this and give me a call if you have questions.

I am currently working with OCE on the penalty amount questions you had. I hope to have a table comparing the penalties with the MAO versus without the MAO for you next week.

Thank you,

Julie Ulibarri
Water Quality Compliance Specialist
DEQ Western Region
165 East 7th Avenue, Suite 100
Eugene, OR 97401
D.L .Phone: 541-687-7437
Fax: 541-686-7551
Ulibarri.julie@deq.state.or.us

APPLICATION AND PERMIT AUTHORIZING
OUTDOOR PUBLIC EVENT IN PUBLIC AREA
CITY OF TOLEDO

APPLY AT LEAST 40 DAYS PRIOR TO EVENT

Deanne Dunlap Kathy Crane director@toledooregon.org
Name of Applicant Email

311 NE 1st, Toledo
Address Telephone

10/31/2018 Wednesday
Date of Event Hours of Event

Main Street Halloween Trick or Treat
Event Location/Address Expected Number of Attendance

after school, door to door on Main Street
Describe the Event *(Please attach any applicable flier or brochure about the event)*

RECEIVED
CITY OF TOLEDO
Date 10/4/18
By

If city services are requested for this event please check the appropriate box and explain below.

☒ Street Closure
Date: Weds. 10/31
Time: 3:30 to 5:30

☒ Barricades
(Use the attached map to clearly mark the requested street closure and barricade placement. City street closures require approval of the City Council.)

☐ Other (please describe the service requested in detail)

Reader Board - Police "Main St. closed Weds."

Name of Alternate contact person for this event email Telephone
deanne.dunlap33@gmail.com

☐ I have attached proof of insurance for this event. (*Proof of insurance is required for events that occur on City property or in City facilities.*)

I certify all information submitted is complete and correct to the best of my knowledge. I understand a false answer may be reason to deny this application.

Deanne Dunlap
Signature of Applicant Date: 10/4/2018

Toledo, Oregon