

Please Return to:
UM Legal Counsel
The University of Montana
133 University Hall
Missoula, MT 59812

ACCESS AND UTILITY EASEMENT AGREEMENT

This Access and Utility Easement Agreement (“Agreement”) is made on _____, by and between The University of Montana, Missoula, MT 59812 (“University”) and Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (“Verizon Wireless”).

RECITALS

WHEREAS, University is the owner of certain property located at Fort Missoula in Missoula County, Montana and in particular a gated access road which provides access to a water tower located on property owned by Northern Rockies Heritage Center (“NRHC”) depicted on **Exhibit “A”** attached to and made a part of this Agreement; and

WHEREAS, Verizon Wireless desires to locate a cellular communications tower on the NRHC water tower depicted as “Proposed Project Area” on **Exhibit “A”** and requires access and utilities over, under and across University property (depicted as “Existing Travelled Way” in “Parent Parcel “B” on **Exhibit “A”**) to the water tower for installation and general maintenance of the proposed cellular communications tower pursuant to an Option and Water Tower Lease Agreement between Verizon and NRHC (the “Lease”); and

WHEREAS, Verizon Wireless has requested University grant an Access and Utility Easement (“Easement”) to use University’s access road and gate and to install and maintain utilities within the existing access road on University property (the “Easement Area”) to serve the water tower located on NRHC property.

NOW, THEREFORE, for and in consideration of the covenants contained herein and other valuable consideration, the parties agree as follows:

SECTION ONE: PERMIT

University grants to Verizon Wireless, subject to the terms and conditions set forth below, an Access and Utility Easement for Verizon Wireless, its employees, and its agents to drive motor vehicles on that part of the access road which University retains control for the purposes of ingress and egress and for constructing, maintaining, operating and repairing utility lines, cables and conduits to and from the Proposed Project Area, and for Verizon Wireless to perform installation and maintenance activities associated with the use of Verizon Wireless' communications facility at the Proposed Project Area. University shall provide Verizon Wireless a key to University's access gate so Verizon Wireless may operate the gate. University's gate shall be closed and locked when not open for the passage of Verizon Wireless' vehicles. No other use of the Easement Area is granted by this Easement. Verizon has the duty to prevent the access road from being congested by traffic associated with the maintenance and installation activities permitted under this Easement.

SECTION TWO: CONSIDERATION

Verizon shall pay University the sum of XXXX Dollars (\$_____), due and payable within 10 business days following execution of this Agreement, and annually thereafter on the first business date following this anniversary date, for the term of this Agreement.

SECTION THREE: TERM

The term of this Easement shall commence when it is signed by University and Verizon Wireless and shall continue for the duration of the Lease, including any renewals thereof, and shall without any further action on the part of Verizon Wireless or University, terminate immediately upon the termination of the Lease.

SECTION FOUR: DEFAULT

Upon Verizon Wireless' default hereunder, University may deliver to Verizon Wireless a written notice of default, stating with specificity the nature of Verizon Wireless' default. If Verizon Wireless has not cured the default within a reasonable time (but not less than 30 days for a monetary default and 60 days for a non-monetary default) after receipt of the notice of default, University may terminate this Agreement effective immediately upon receipt by Verizon Wireless of University's written notice of termination.

SECTION FIVE: ASSIGNMENT

Neither Verizon nor University may assign this Agreement. If Verizon Wireless wishes to assign and delegate all or any portion of its rights and liabilities under this Agreement in connection with any assignment of the Lease University shall terminate this Easement and negotiate a separate Easement Agreement with the assignee.

SECTION SIX: RESTORATION

Verizon Wireless is responsible for any damage to the access road and gate which is caused by the activities of the Verizon Wireless. In the event Verizon Wireless' activities damage the access road or gate, Verizon Wireless shall restore the access road or gate to its prior condition subject to University's satisfaction. Any work performed on the access road or gate must be reasonably approved by University, and must be performed in a good and workmanlike manner.

SECTION SEVEN: EXPENSES

Verizon will pay for all expenses related to the design, construction and maintenance of the easement. Any expenses arising out of the activities of Verizon Wireless at University's property, including but not limited to any access road or gate restoration pursuant to SECTION SIX, must be paid by Verizon Wireless.

SECTION EIGHT: UNIVERSITY'S USE OF ACCESS ROAD AND GATE

University retains, reserves, and will continue to enjoy the right to use the access road and gate for any and all purposes. University will have the right, but not the duty, at all times to restrict use of the access road and to prevent the access road from being congested with traffic.

SECTION NINE: VERIZON RESPONSIBILITIES

Verizon shall employ an archeologist on site during easement upon the Easement Area as shown in Exhibit A; archeologist shall have authority to stop excavation in the event that significant historical resources, Native American cultural materials, or human remains are uncovered. Verizon will actively coordinate with University regarding the schedule of construction and installation of utilities. When power cabling is buried it should be in schedule 40 PVC conduit, buried to a depth of 24 inches with a red caution tape run 6 inches above the top of the conduit. Verizon shall not trod upon nor disturb the native plants and garden located to the west of the Easement Area.

SECTION TEN: AMENDMENT

This Agreement may be modified or amended in whole or in part only by a written instrument executed by University and Verizon Wireless.

SECTION ELEVEN: ATTORNEY'S FEES AND COSTS

In the event of any litigation arising out of or with respect to this Agreement, the prevailing party will have the right to be paid all costs and expenses including, but not limited to, reasonable attorney's fees, expert witness fees and all other costs, including all such costs with respect to any appellate proceedings.

SECTION TWELVE: ENTIRE AGREEMENT

This Agreement and the exhibits to this Agreement contain all the representations and the entire Agreement between University and Verizon Wireless. Any prior correspondence, memoranda or agreement are superseded in total by this Agreement.

SECTION THIRTEEN: INDEMNIFICATION

Verizon Wireless agrees to indemnify, defend and hold University harmless from and against any direct injury, loss, damage or liability, costs or expenses (including reasonable attorneys' fees and court costs) resulting from its use of the Easement Area, except to the extent attributable to the negligent or intentional act or omission of University or its servants or agents. University agrees to indemnify, defend and hold Verizon Wireless harmless from and against any and all direct injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the actions or failure to act of University or its agents, except to the extent attributable to the negligent or intentional act or omission of Verizon Wireless or its servants or agents.

SECTION FOURTEEN: MISCELLANEOUS

Choice of Law. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Montana.

Venue. Any disputes arising under this Agreement shall be resolved in the Fourth Judicial District Court of the State of Montana, located in Missoula, Missoula County, Montana, and the parties consent to the jurisdiction of said court.

Severability. The invalidity, in whole or in part, of any term of this Agreement does not affect the validity of the remainder of the Agreement. A court shall enforce all provisions of the Agreement, which are not invalid.

THE UNIVERSITY OF MONTANA

Gold Creek Cellular of Montana Limited
Partnership d/b/a Verizon Wireless
By Cellular Inc. Network Corporation, Its
General Partner

By: _____
Hugh Jesse, Director of Facility Services

By: _____
Walter L. Jones, Jr.
West Area Vice President – Network

Date: _____

Date: _____

EXHIBIT "A"

See attached.

DRAFT