

RESOLUTION NO. 51-17

A RESOLUTION AUTHORIZING THE CITY FINANCE DEPARTMENT TO ENTER INTO THE NON-EXCLUSIVE LICENSE AGREEMENT WITH MOBILITIE TO MAINTAIN, OPERATE AND CONTROL A WIRELESS AND FIBER TELECOMMUNICATIONS NETWORK IN THE PUBLIC RIGHT-OF-WAY

Recitals:

In May 2014, the Grand Junction City Council adopted a three to five-year Economic Development Plan (EDP) for the purpose of creating a clear plan of action for improving business conditions and attracting and retaining employers. Section 1.4 of the EDP focuses on providing technology infrastructure that enables and supports private investment. Expanding broadband capabilities and improving wireless and/or cellular coverage are key objectives of the EDP.

In June 2016, City Council adopted a Wireless Master Plan (WMP) to serve as a general planning tool to limit unnecessary proliferation of wireless infrastructure while maintaining compliance with state and federal regulations and allowing expansion and improvement of networks and greater access to wireless technology in the community. The WMP identifies areas where coverage is needed, and provides a framework for development of towers that will help maximize network coverage while minimizing the number of new telecommunication facilities. It includes siting standards and preferences for new communication facilities to ensure compatibility with the community and neighborhood character(s).

The proposed 15-year license agreement establishes a general framework for the Mobilitie's use of Public Rights-of-Way for telecommunications equipment and its proprietary poles. The company will maintain, operate and control a wireless and fiber telecommunications network serving Mobilitie's wireless and backhaul customers in accordance with Federal Communications Commission regulations. The license agreement does not replace the standards of the Grand Junction Municipal Code or preclude the need for the company to obtain land use approval and right-of-way work permits before installing equipment.

Public property provides a stable platform for wireless companies and the compensation received for the tower lease can support the telecommunications needs of the City and help to control costs of public communications facilities. The Comprehensive Plan's Future Land Use Map (attached) identifies growth opportunities and density increases for this area as Grand Junction grows over the next 25 years.

NOW THEREFORE BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The City of Grand Junction Finance Department is authorized to enter into the Non-Exclusive License Agreement for the placement of telecommunication in the City of Grand Junction Public Right-of-Way. (Exhibit A).

PASSED AND APPROVED this 6th day of September, 2017.

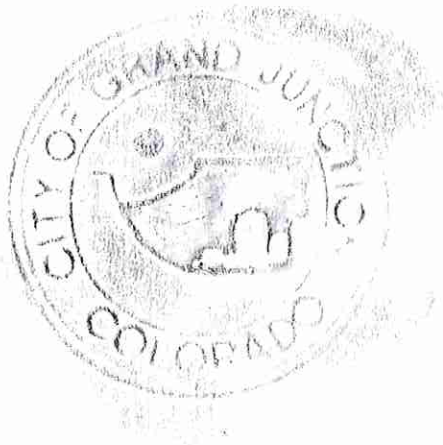


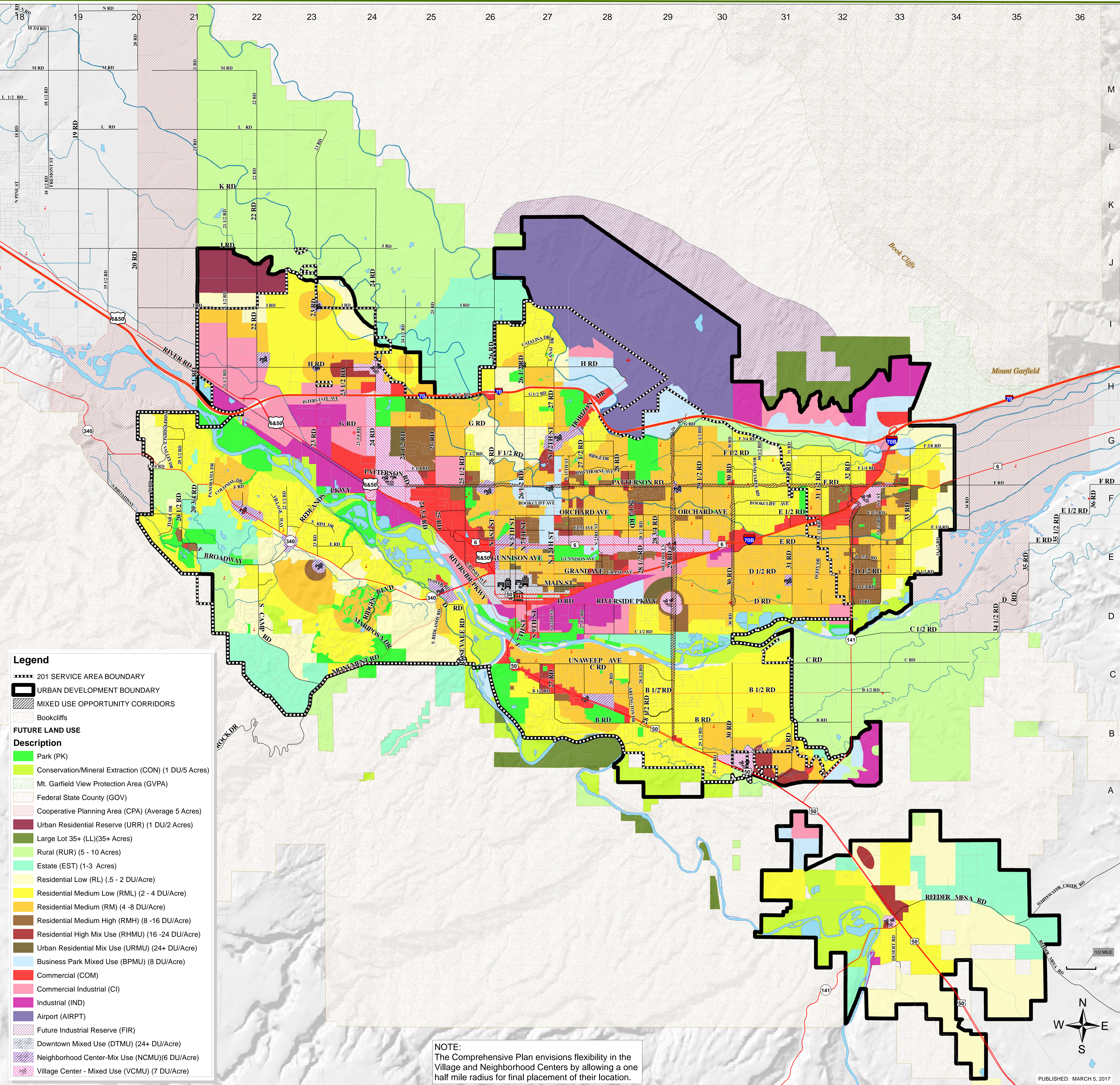
President of the Council

ATTEST:



City Clerk





Legend

- 201 SERVICE AREA BOUNDARY
- URBAN DEVELOPMENT BOUNDARY
- MIXED USE OPPORTUNITY CORRIDORS
- Bookcliffs

FUTURE LAND USE

Description

- Park (PK)
- Conservation/Mineral Extraction (CON) (1 DU/5 Acres)
- Mt. Garfield View Protection Area (GVPA)
- Federal State County (GOV)
- Cooperative Planning Area (CPA) (Average 5 Acres)
- Urban Residential Reserve (URR) (1 DU/2 Acres)
- Large Lot 35+ (LL)(35+ Acres)
- Rural (RUR) (5 - 10 Acres)
- Estate (EST) (1-3 Acres)
- Residential Low (RL) (.5 - 2 DU/Acre)
- Residential Medium Low (RML) (2 - 4 DU/Acre)
- Residential Medium (RM) (4 - 8 DU/Acre)
- Residential Medium High (RMH) (8 - 16 DU/Acre)
- Residential High Mix Use (RHMU) (16 - 24 DU/Acre)
- Urban Residential Mix Use (URMU) (24+ DU/Acre)
- Business Park Mixed Use (BPMU) (8 DU/Acre)
- Commercial (COM)
- Commercial Industrial (CI)
- Industrial (IND)
- Airport (AIRPT)
- Future Industrial Reserve (FIR)
- Downtown Mixed Use (DTMU) (24+ DU/Acre)
- Neighborhood Center-Mix Use (NCMU)(6 DU/Acre)
- Village Center - Mixed Use (VCMU) (7 DU/Acre)

NOTE:
The Comprehensive Plan envisions flexibility in the Village and Neighborhood Centers by allowing a one half mile radius for final placement of their location.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2017, ("Effective Date") by and between the City of Grand Junction, Colorado ("City"), a Colorado home rule municipality, and Mobilitie, LLC ("Company"), a Nevada limited liability corporation _____, with its principal office located at 2200 University Drive, Newport Beach, CA 92660.

RECITALS

A. The Company maintains, operates and controls a wireless and fiber telecommunications network serving Mobilitie's wireless and backhaul customers (collectively, the "Network," as more fully described in Section 1 below) in accordance with regulations promulgated by the Federal Communications Commission.

B. For purpose of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Telecommunications Equipment in the Public Rights-of-Way (as defined in Section 1.10 and Section 1.7 below).

C. The purpose of this License Agreement is to establish a general framework for the Company's use of Public Rights-of-Way for Telecommunications Equipment and for its proprietary poles.

D. This License Agreement does not supplant or supersede the requirements, rules or standards of the Grand Junction Municipal Code nor obviate the need for the Company to obtain land use approval and right-of-way work permits before installing Telecommunications Equipment or Company Poles in any Public Right-of-Way.

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- 1.1 "Applicable Laws" means any and all statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the City or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.
- 1.2 "City Facility or Facilities" means the City's traffic signal, utility, or other poles, and city-owned structures within the Public Rights-of-Way.

- 1.3 “FCC” means the Federal Communications Commission.
- 1.4 “Network” or collectively “Networks” means one or more of the wireless and fiber-based telecommunications facilities controlled by the Company to serve its wireless and backhaul customers in the City.
- 1.5 “Person” means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.
- 1.6 “Public Property” means any real property owned by the City other than Public Rights-of-Way.
- 1.7 “Public Rights-of-Way” or “PROW” means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, bridge, tunnel, parkway, waterway, or easement now or hereafter held by the City, or dedicated for use by the City, use by the general public, or use compatible with the service or operations of the Telecommunications Equipment.
- 1.8 “ROW Work Permit” shall mean and refer to a permit pursuant to Chapter 12.28 of the Grand Junction Municipal Code.
- 1.9 “Service” or “Services” means the Telecommunications services provided through the Network by the Company to its customers.
- 1.10 “Telecommunications Equipment” or “Equipment” means facilities used by the Company and located on Wireless Sites in the Public Rights-of-Way to provide Services, including but not limited to antennas, cables, fibers, wires, lines, waveguides, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, or other associated conductors, converters, equipment or facilities, and related hardware. Telecommunications Equipment does not include poles, towers and other vertical structures on which such facilities may be attached.
- 1.11 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing.
- 1.12 “Wireless Site” means a location on Public Rights-of-Way selected for the Company’s deployment of Telecommunications Equipment on a Company Pole.
- 1.13 “Macro Wireless Site” means a Wireless Site that does not meet the definitions, requirements and standards of Grand Junction Municipal Code §21.04.030(q) applicable to small cell telecommunications facilities.
- 1.14 “Small Cell Wireless Site” means a Wireless Site that meets the definitions, requirements and standards of GJMC §21.040.030(q) applicable to small cell telecommunications facilities.

- 1.15 “Wireless Site Inventory” is the complete and current inventory of Wireless Sites in the City maintained by the Company in accordance with this Agreement.

SECTION 2. GRANT OF AUTHORITY

- 2.1 Grant of License. The City hereby grants to the Company, a non-exclusive license to use and occupy parts of the PROW within the City in accordance with this Agreement for the purpose of installing and maintaining Telecommunications Equipment, including the right to attach, operate, maintain, and replace Telecommunications Equipment on the Company’s proprietary poles/vertical support structures (“Company Pole”) and the right to install Company Poles so long as such are used to support/attach Telecommunications Equipment and to provide Telecommunications Service(s), subject to the conditions outlined in this Agreement. Nothing in this Agreement authorizes the installation of a “spec” pole by the Company in any PROW (that is, a pole for which there is no carrier who has committed to attaching, installing or utilizing Telecommunications Equipment thereon). The Company shall install its Telecommunications Equipment and Company Poles consistent with the City’s applicable ordinances and regulations. Section 127 of Article XIV of the City Charter is not applicable to this Agreement but is applicable to permits granted under this Agreement. This Agreement does not grant any right, authority or permission to the Company to install or operate a cable TV system within the City of Grand Junction, or to allow any third party to do so over the Company’s network or Equipment.
- 2.2 All Telecommunications Equipment and Company Poles must comply with height and other zoning restrictions applicable to poles and/or structures in the zone district in which they are located and shall otherwise comply with the City’s Zoning and Development Code (Chapter 21 of the Grand Junction Municipal Code).
- 2.3 No equipment shelters or cabinets, and no electrical distribution panels may be installed at ground level, except after all reasonable alternative pole locations have been explored and found unavailable or lacking in some substantial way and only with the prior written approval of the City upon a good faith showing of necessity, and upon such conditions as the City deems appropriate under the circumstances. The City shall reasonably weigh such requests against historic preservation policies, aesthetic considerations, pedestrian and disabled person access to sidewalks, public safety concerns, technical installation conflicts, and compliance with Applicable Law. The permitted use of PROW shall include the installation, on a set alone basis, of wireless backhaul transmission equipment owned by the Company on any eligible pole as necessary for the operation of Telecommunication Equipment.
- 2.4 License Term. The initial term of this Agreement shall commence upon the Effective Date, and shall expire fifteen (15) years from the Effective Date (the “Term”), unless renewed as herein provided.
- 2.5 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided and all Applicable Laws.

- 2.6 Non-Exclusive License. The Company's right to use and occupy the PROW and attach to Company Poles therein shall not be exclusive. The City reserves the right to grant a similar use of the PROW to itself or any person or entity at any time during any term of this Agreement.
- 2.7 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights ("Claims") it may assert against the City and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Telecommunications Equipment, or any loss or degradation of Service resulting from the installation, operation, maintenance or malfunction of Telecommunications Equipment regardless of cause, except with respect to Claims the Company may assert against the City and its officials, personnel, agents, and representatives in connection with their gross negligence or willful misconduct provided that such Claims are not barred by the Colorado governmental immunity statutes, as codified currently at Sections 24-10-106, 24-10-106.1 and 24-10-106.3, C.R.S., and as may be revised from time to time. Notwithstanding the foregoing, nothing in this Agreement may be construed to waive, alter, supersede or negate the City's sovereign or governmental immunity rights, privileges, immunities and protections afforded by statute or by common law.
- 2.8 For the purpose of this Agreement, the City is acting as a landlord and not acting in a regulatory capacity; therefore the terms of this Agreement and the parties' conduct hereunder are not subject to the limitations on local government regulatory authority over "personal wireless service facilities" as that term is defined at 47 U.S.C. § 332(c)(7)(C)(ii), whether such limitations are created by statute, regulation or case law construing the same. The zoning and development approval process is outside the purview of this Agreement and is subject to such limitations. Nothing under this Agreement shall be interpreted to create or vest in the Company any easement or other ownership or property interest to any Public Property or PROW or constitute an assignment of any City rights to Public Property or PROW. The Company shall, at all times, be and remain a licensee only.
- 2.9 No Illegal Activity Permitted. The Company shall not use or permit the Wireless Sites to be used for any activity violating any Applicable Laws.
- 2.10 Fees. To defray the increased costs of administration, of increased maintenance of the PROW, and of maintenance, repair and replacement of other utilities in the PROW caused and/or necessitated by the Company's facilities in the PROW, Company shall pay \$250 per month per Macro Wireless Site deployed on a Company Pole in the PROW ("License Fees"). The City will not charge a license fee for the installation of Small Cell Wireless Sites (or Company Poles supporting the same) in the PROW.
- 2.11 Payment of License Fees. Company shall pay any applicable License Fee, without requirement for invoice or reminder from the City, on or about January 1 of each year this Agreement remains in effect, but in no event later than January 15 (the "Due Date"). Each initial License Fee shall be prorated to cover a period commencing upon

the installation of a Macro Wireless Site deployed on a Company Pole and conclude on December 31 of the same year, and each subsequent annual License Fee shall commence on the following January 1 and conclude on December 31 of the subsequent year, unless the Macro Wireless Site deployed on the Company Pole is removed from the Wireless Site during the subsequent year, in which case the associated License Fee shall be prorated. When delivering License Fee payments, Company shall set forth the location and the installation date (and the removal date if applicable) of each Macro Wireless Site on a Company Pole and the total number of such Macro Wireless Sites deployed on Company Poles in the PROW. If any License Fee described in this paragraph, or any portion thereof, is not postmarked or delivered on or before the Due Date, interest thereon shall accrue from the Due Date until received, at the rate of eighteen percent (18%) per annum. Company shall pay License Fees in the form of a money transfer or a check made out to the order of the City of Grand Junction and sent to:

City of Grand Junction
Attn: Scott Hockins, Purchasing Manager
250 N. 5th Street
Grand Junction, Colorado 81501

- 2.12 Unauthorized installations of Macro Wireless Site on Company Poles shall be subject to an additional 50% as described in Section 3.8 below.

SECTION 3. PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY

- 3.1 Permitted Use of PROW. PROW may be used by the Company, seven (7) days a week, twenty-four (24) hours a day, only for the selection of Wireless Sites and, following the completion of the required permitting process, for the installation, maintenance, repair, modification, replacement and upgrade of Telecommunications Equipment for the transmission and reception of radio communication signals, and for the construction, installation, maintenance, repair and replacement of Company Poles used for the provision of Telecommunication Service, and not for any other purpose. It is understood that the purpose for installing Telecommunications Equipment and Company Poles at designated Wireless Sites in the PROW is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures. This Agreement shall include new types of Telecommunications Equipment that may evolve or be adopted using wireless technologies. The Company shall, at its expense, comply with all Applicable Laws in connection with the use, installation, operation, maintenance, and replacement of Telecommunications Equipment on PROW.
- 3.2 Land Use/Development and ROW Work Permit Requirements.

- 3.2.1 For installations, construction, operation, maintenance, and removal of Telecommunications Equipment pursuant to this Agreement, the Company shall obtain a ROW Work Permit and shall post all performance and warranty guarantees as required by Chapter 12.28 of the Grand Junction Municipal Code (GJMC). The Company's work in the PROW hereunder shall be governed by this Agreement and by the provisions of Chapter 12.28 GJMC. The City will process all permit applications in a non-discriminatory and competitively neutral manner.
- 3.2.2 Company shall obtain a land use/development permit in accordance with the zoning and Development Code for each wireless site. Land use permitting is outside the purview of this Agreement. It is the general policy of the City to comply with the City's Zoning and Development Code in the development and use of City property. This License Agreement shall not be construed to create or constitute any exception to that policy.
- 3.2.3 The Company is responsible for obtaining any and all land use approval(s) and for complying with the provisions of the City's Zoning and Development Code prior to installing or modifying Wireless Sites.
- 3.2.4 Any Equipment or Company Poles installed prior to obtaining all required land use permits/approvals may be removed by the City in accordance with Section 3.5 below. This is in addition to and not a limitation of any remedies that the City may have pursuant to its land use authority as set forth in the Zoning and Development Code, Title 21, GJMC.
- 3.3 Utilities. The Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its Telecommunications Equipment. In no event will the Company secure its utilities by sub-metering from the City.
- 3.4 Duty to Minimize Interference. The Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility or City-authorized activity in the PROW, including sanitary sewers, water mains, storm water drains, pipes and related facilities, gas mains, poles, aerial and underground electrical infrastructure, cable television and telecommunication wires, vehicular, pedestrian and bicycle traffic, public safety and City networks, and other telecommunications, utility, or Public Property. All Company activities in the PROW shall be carried on as to minimize interference with the use of the PROW and with the use of private property, in accordance with all regulations of the City necessary to provide for and protect public health, safety and convenience. The Company's facilities shall not create any physical obstruction or dangerous visual obstruction for vehicular, bicycle or pedestrian traffic on the PROW.
- 3.5 Relocations.

- 3.5.1 The City shall have the right to require the Company to relocate, remove, replace, modify or disconnect Telecommunications Equipment or Company Pole(s) located in the PROW for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, PROW vacation, PROW construction, change or establishment of PROW grade, installation of sewers, drains, electric lines, gas or water pipes, conduits, cables, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Company's expense. Except during an emergency, the City shall provide reasonable notice to the Company, of not less than ninety (90) days, and allow the Company the opportunity to perform such action. Following notice by the City, the Company shall relocate, remove, replace, modify or disconnect any of its Telecommunications Equipment within any PROW. If the City requires the Company to relocate its Telecommunications Equipment located within the PROW, the City shall make a reasonable effort to provide the Company with an alternate location within the PROW. During such relocation, if necessary, in the Company's reasonable determination, and consistent with any applicable permit requirements, it may place a temporary installation in the PROW (e.g. cell-on-wheels).
- 3.5.2 If the Company fails to complete the relocation within the time prescribed, which shall be no less than 90 days, and to the City's reasonable satisfaction, the City may remove the Telecommunications Equipment or otherwise cause such work to be done and bill the cost of the work to the Company, including all reasonable costs and expenses incurred by the City due to the Company's delay. In such event, the City shall not be liable for any damage to any portion of the Network. Company shall defend, indemnify and hold harmless the City from any claim(s) by telecommunications carriers and/or Service providers using the Network arising in any way out of the City's removal of an installation. The Company shall make full payment to the City within thirty (30) days of receipt of an itemized list of such costs.
- 3.6 Duty to Repair. Any PROW, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement, relocation, operation or maintenance of the Telecommunications Equipment shall be promptly repaired and restored to substantially its prior condition by the Company, at its sole expense.
- 3.7 Inventory of Wireless Sites. The Company shall maintain a current Wireless Site Inventory throughout the Term. The Company shall provide to the City a copy of the Wireless Site Inventory every year on the anniversary date of this Agreement until the end of the Term. The inventory shall include GIS coordinates, date of installation, the Company Site ID #, type of pole used for installation, and description/type of installation for each Wireless Site and of the Telecommunications Equipment installed. Concerning Wireless Sites that become inactive, the Wireless Site Inventory shall include the same information as active installations in addition to the date the Wireless

Site was deactivated and the date the Telecommunications Equipment was removed from the PROW. The City will compare the Wireless Site Inventory to its records to identify any discrepancies.

3.8 Unauthorized Installations. Any unauthorized Wireless Sites identified by the City as a result of comparing the Wireless Site Inventory to internal records or through any other means will be subject to the payment of unauthorized installation charges by the Company, which charges shall exceed by 50% the charges that would be due if such installations had been authorized, based on the actual installation date and the best evidence thereof. The City shall provide written notice to the Company of any unauthorized Wireless Site identified by City staff and the Company shall have thirty (30) days thereafter in which to acquire the necessary approvals for that site. If the Company fails to acquire necessary approvals, the Company shall remove the Wireless Site Telecommunications Equipment and Company Pole(s) from the Right-of-Way within ninety (90) days. Failure of the Company to pay the unauthorized installation charges, or to timely remove the unauthorized installation in accordance with this subsection, may, in the City's sole discretion, result in removal of the installation by the City. If the City elects to remove the unauthorized installation(s), the City shall not be liable for any damage to any portion of the Network or damages based on interruption of Service. Company shall defend, indemnify and hold harmless the City from any claim(s) by telecommunications carriers and/or Service providers using the Network arising in any way out of the City's removal of an installation.

3.9 Signal Interference Prohibited.

3.9.1 Notice; Company Response. In the event the Telecommunications Equipment interferes with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, the Company will respond to the City's written request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined in Section 3.9.2 below and shall follow the escalation process outlined in Section 5.3 of this Agreement.

3.9.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the City an interference remediation report that includes the following items:

- (a) Remediation Plan. Devise a remediation plan to stop the event of interference;
- (b) Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and
- (c) Additional Information. Include any additional information relevant to the execution of the remediation plan.

3.9.3 Removal; Relocation. In the event interference with City facilities cannot be eliminated, the Company shall shut down the Telecommunications Equipment and pursuant to Section 3.5 remove or relocate the Telecommunications Equipment that is the source of the interference to a suitable alternative location as soon as possible.

3.10 Deactivated Wireless Sites/Installations. When a Wireless Site is deactivated and/or all the Telecommunications Equipment removed therefrom, Company shall remove any Company Poles and substantially restore the site to its prior condition, excluding normal wear and tear, within ninety (90) days of the date of deactivation/removal. Company Poles on deactivated sites/installations that have not been removed by the Company within the prescribed time can be removed by the City and site restored to its prior condition, and the Company shall be responsible for the costs thereof. Invoices for costs of removal/restoration shall be paid by the Company within 45 days of the invoice date.

SECTION 4. ATTACHMENT TO CITY FACILITIES

4.1 This Agreement does not authorize Company to locate telecommunications equipment on City Facilities, although such may be authorized by separate agreement.

SECTION 5. EMERGENCY CONTACTS

5.1 Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the City will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The City will make every reasonable effort to coordinate its emergency response with the Company. To that end, the City will use the following emergency contacts:

5.1.1 Level One Contact: The Company's network operations center may be reached 24/7 at: 877-244-7889 and email: mnoc@mobilitie.com.

5.1.2 Level Two Contact: In the event the Company's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the City may contact:

Gail Allen, Manager, Operations Phone: 702-777-4508 Email: GAllen@mobilitie.com or

Nam King, Sr. Director Network Operations Phone: 312-638-5409 Email: nam@mobilitie.com

5.1.3 Level Three Contact: In the event the emergency situation calls for a coordinated effort between the City's and Company's management team, the City may contact:

Scott Holt, VP, Network Operations, Phone: 206-510-4658 Email: scott.holt@mobilitie.com.

- 5.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the Director of Public Works.
- 5.3 Company's Response to Network Emergency. In case of a Network emergency due to any unforeseen event, the Company may access its Telecommunications Equipment without first obtaining a ROW Work Permit provided the Company has conducted Network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a Network emergency, the Company shall conduct its activities within the PROW in such a manner as to protect public and private property. The Company will make every reasonable effort to coordinate its emergency response with the City. To that end, prior to entering the PROW, the Company will use the following emergency contacts to give notice to the City of the Network emergency and an estimated time period to address the situation:
- 5.3.1 The City's Facility Manager may be reached 24/7 at: (970) 256-4021. In addition, the City's Purchasing Manager may be reached during the City's business hours at: (970) 244-2484.
- 5.4 City's Duty to Maintain Emergency Contacts. The City will maintain the Company's current emergency contact information at all times.

SECTION 6. INDEMNITY AND INSURANCE

- 6.1 Indemnity.
- 6.1.1 The Company shall indemnify, defend and hold the City, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses caused by the installation, use, maintenance, repair or removal of the Telecommunications Equipment or the Company's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of one or more of the Indemnified Parties.
- 6.1.2 Notwithstanding anything to the contrary in this Agreement, the Company and the City each waives any claims that each may have against the other with respect to consequential, incidental, indirect or special damages.
- 6.1.3 The City will give the Company timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with the Telecommunications Equipment. In the event such claim arises, the City or any other Indemnified Party shall tender the defense thereof

to the Company and the Company shall have the right to defend, settle or compromise any claims arising hereunder and the Company shall consult and cooperate with the City while conducting its defense of the City. The City shall cooperate fully therein.

6.2 If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Company to represent the City, the Company shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by the Company. Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires the Company to pay those expenses, then the City shall be required to obtain the Company's consent to the engagement of such counsel, experts or consultants, which consent shall not be unreasonably withheld. The City's expenses hereunder shall include all reasonable out of pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Company.

6.3 Insurance.

6.3.1 The Company shall carry during the Term, at its own cost and expense, the following insurance: (i) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (ii) Workers' Compensation Insurance as required by law.

6.3.2 The coverage afforded by the Company's commercial general liability insurance shall apply to and name the City as an additional insured, and shall provide a defense and indemnification to the City regardless of the City's fault or wrongdoing. The insurance shall indemnify and defend the City against all loss, damage, expense and liability o the extent obligated under this agreement.

6.3.3 Within thirty (30) days following the Effective Date, the Company shall provide the City with a Certificate of Insurance and any endorsements or copies of policies determined by the City to be necessary to provide evidence of the coverage required by this Section 6.3. The insurance policy/ies may be modified or cancelled only after a 30-day written notice to the City.

6.3.4 The Company shall provide thirty (30) days advance notice to the City in the event of cancellation of any coverage.

6.3.5 Evidence of all insurance required hereunder shall be furnished upon request to the City.

SECTION 7. DEFAULT AND REMEDIES

- 7.1 Notice of Violation. A party shall provide the other party with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which the breaching party may: (a) demonstrate that a violation does not exist or cure an alleged violation, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the non-breaching party of such plan of action.
- 7.2 Default. If the breaching party fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in thirty (30) days and the breaching party has failed to initiate a reasonable plan of corrective action and to correct the violation within the specified time frame, then the non-breaching may declare in writing that the breaching party is in default.
- 7.3 Bankruptcy. The parties expressly agree and acknowledge that it is their intent that in the event the Company shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any Person or entity, to which the Company's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the City, shall be the exclusive property of the City, and shall not constitute property of the Company or of the estate of the Company within the meaning of the Code. Any monies or other considerations constituting the City's property under the preceding sentence not paid or delivered to the City shall be held in trust for the benefit of the City and be promptly paid to the City.
- 7.4 Hearing Available to Company. Within fifteen (15) days after receipt of a written declaration of default from the City, the Company may make a written request for a hearing before the City Council or its designee, in a public proceeding affording due process. If a hearing is not requested, the City may seek any remedy available under Applicable Law. If a hearing is requested, such hearing shall be held within sixty (60) days of the receipt of the request therefor and a decision rendered within fifteen (15) days after the conclusion of the hearing. The City Council may revoke based upon a finding of default or a dangerous condition in or on the PROW caused or created by or substantially related to the Company's pole(s), equipment, or facility in the PROW. Any decision shall be in writing and shall be based upon written findings of fact.

- 7.5 Appeal of Default. The Company may appeal a finding of default and/or imposition of remedies by the City Council or its designee, which appeal shall be pursuant to C.R.C.P. 106, and based upon the written record. Alternatively, the parties may, by mutual agreement, agree to address the finding of default through arbitration.

SECTION 8. AMENDMENT AND RENEWAL.

- 8.1 Amendment. Written requests to amend this Agreement for any purposes may be made by either party. The parties shall engage in good faith discussions and endeavor to reach agreement within sixty (60) days of receipt of such written request. Any amendment shall become effective after being duly executed by both parties. Notwithstanding the foregoing, nothing shall require either party to agree to any amendment request.
- 8.2 Renewal.
- 8.2.1 Unless earlier terminated by either party pursuant to the provisions of this Agreement, this Agreement shall renew automatically on the same terms and conditions as herein for one (1) successive term of fifteen (15) years, for a total of up to fifteen (15) years beyond the initial Term of this Agreement, provided that the Company has complied with the material terms of this Agreement. If the City does not believe that the Company is entitled to renewal as requested, the City shall provide written notification to the Company at least ninety (90) days prior to the expiration date of this Agreement, in which notice the City shall provide support for its position.
- 8.2.2 As between the City and the Company, the Company shall at all times retain ownership of the Telecommunications Equipment. Upon expiration of this Agreement, within ninety (90) days of the expiration of the then-current Term, the Company shall be permitted to remove Telecommunications Equipment installed within the PROW, or alternatively, sell the same to a qualified buyer consistent with Applicable Law. In no event may Company abandon in place any Telecommunications Equipment installed in or on the PROW, unless ownership of the installation is transferred to the City and the City accepts ownership of the installation in writing.
- 8.2.3 The Company may terminate this Agreement in part, as it applies to any or all Wireless Sites, at any time for convenience by providing the County with forty-five (45) days advanced written notice. In event of termination, Company shall remove installation and restore the site substantially to its prior condition within ninety (90) days of the date of the termination notice. Liability and indemnity obligations of the Company survive termination by the Company for a period of three years following the notice. Following the removal of the installation and complete restoration of the site, the parties shall adjust all rates pro rata and on a going forward basis from the date such restoration is complete.

SECTION 9. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL.

- 9.1 Definitions. In this Section, the following words have the meanings indicated:
- 9.1.1 “Control” means actual working control in whatever manner exercised. “Control” includes, but may not necessarily require, majority stock ownership or control of 51 percent or more of the voting rights in the Company.
- 9.1.2 “Proposed Transferee” means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of this Agreement in its entirety or of the Company.
- 9.2 No Transfer. The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, or any of the rights or privileges therein granted, without prior notice to the City, except that such notice shall not be required for an assignment by the Company to the Company’s principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of the Company’s assets in the market defined by the FCC in which the PROW is located by reason of a merger, acquisition or other business reorganization provided that such acquiring entity is bound by all of the terms and conditions of this Agreement.
- The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Telecommunications Equipment deployed by Company in the PROW pursuant to this Agreement may be owned and/or operated by Company’s third-party wireless carrier customers (“Carriers”) and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such Telecommunications Equipment shall be treated as Company’s Telecommunications Equipment for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such Telecommunications Equipment and (ii) City’s sole point of contact regarding such Telecommunications Equipment shall be Company;
- 9.3 Company Control. The requirements of Section 9.2 shall also apply to any change in control of the Company. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any Person or group of Persons of fifty-one percent (51%) or more of the voting shares of the Company.
- 9.4 Required Information. In its notice of any change in ownership or control, as provided for in Sections 9.2 and 9.3, the Company shall require the Proposed Transferee to indicate whether it:
- 9.4.1 Has ever been convicted or held liable for acts involving deceit including any violation of Applicable Laws, or is currently under an indictment, investigation or complaint charging such acts;

- 9.4.2 Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
 - 9.4.3 Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a network and/or equipment similar to that contemplated by this Agreement, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;
 - 9.4.4 Is financially solvent by submitting the financial data including financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation along with any other data that the City may reasonably require; and
 - 9.4.5 Has the financial and technical capability to enable it to maintain and operate the Network and Telecommunications Equipment for the remainder of the Term; and shall provide such information to the City together with its Notice. The Company's failure to provide the required notice and information to the City may, in the City's sole discretion, result in revocation of this Agreement and/or any license assigned or transferred hereunder.
- 9.5 Company's Compliance with Terms. In its notice of any change in ownership or control, the Company shall indicate whether it has failed to comply in all material respects with any material provision of this Agreement at any point during the term of this Agreement.
- 9.6 No Waiver. Any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.
- 9.7 Agreement Binding. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.
- 9.8 Pledge of Assets. Notwithstanding anything contained in this Agreement, the Company may pledge the assets of the Network and Telecommunications Equipment for the purpose of financing provided that such pledge of assets shall not impair the Company or mitigate the Company's responsibility and capability to meet all its obligations under the provisions of this Agreement.

SECTION 10. MISCELLANEOUS

- 10.1 Severability. If any law, ordinance, regulation or court decision renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.
- 10.2 Force Majeure. Neither party shall be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other

circumstances beyond the Company's control, provided the Company took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to the City.

10.3 No Waiver.

10.3.1 The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

10.3.2 Both the City and the Company expressly reserve all rights they may have under law to the maximum extent possible, and neither the City nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

10.3.3 Nothing in this Agreement shall constitute or be construed to effect a waiver of the City's governmental immunity under statute or common law.

10.4 Attorney Fees. Should any dispute arising out of this Agreement lead to arbitration or litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

10.5 Consent Criteria. In any instance where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

10.6 Notice. All notices that shall or may be given pursuant to this Agreement must be in writing and delivered by hand or (a) through the United States mail, by registered or certified mail; (b) by prepaid overnight delivery service; or (c) by email transmission. If a hard copy of the same is delivered through the U. S. Postal Service or by overnight delivery service, it shall be delivered to the following addresses:

If to City:

Scott Hockins, Purchasing Manager
City of Grand Junction
250 N. 5th Street
Grand Junction, Colorado 81501

If to Company:

Attn: Legal Department
660 Newport Center Drive
Suite 200
Newport Beach, California 92660

With a copy to:

Attn: Asset Management
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

Each party shall provide timely notice to the other of changes in the address for notification under this provision. Notice shall be deemed effective upon receipt in the case of hand delivery, three days after delivery to the U.S. Postal Service, or the next business day if delivery is effectuated by email or overnight delivery service.

- 10.7 Representations and Warranties. Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon it without the requirement of the approval or consent of any other Person or entity in connection herewith.
- 10.8 Amendment. This Agreement may not be amended except pursuant to a written instrument signed by both parties.
- 10.9 Other PROW Users. The parties understand and agree that the City permits other Persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the City shall not be liable to Company for any damage caused by those Persons or entities.
- 10.10 Entire Agreement. This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.
- 10.11 Laws Governing/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Mesa County, Colorado.
- 10.12 No Third-Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 10.13 Counterparts; Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this

Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

- 10.14 Public Disclosure. The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-202(6), and accordingly may be disclosed to the public.

[Signatures on next page.]

[Signature page for License Agreement.]

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

CITY OF GRAND JUNCTION

By: _____
Name: _____
Its: _____
Date: _____

MOBILITIE, LLC

By: _____
Name: _____
Its: _____
Date: _____