

## RESOLUTION NO. 32-18

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE NON-EXCLUSIVE LICENSE AGREEMENT WITH VERIZON 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 20-year license agreement establishes a general framework for the Verizon's use of Public Rights-of-Way for telecommunications equipment. The company will maintain, operate and control a wireless and fiber telecommunications network serving Verizon'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 City Manager 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 6<sup>th</sup> day of June, 2018.

*Bob Taylor Smith*

\_\_\_\_\_  
Mayor

ATTEST:

*W Wankelmann*

\_\_\_\_\_  
City Clerk



**AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND  
VERIZON WIRELESS FOR THE USE OF PUBLIC RIGHT-OF-WAY  
FOR OPERATION OF A WIRELESS NETWORK**

This Agreement is made and entered into by and between the City of Grand Junction, a Colorado home rule municipality (“Licensor”) and CommNet Cellular Inc. d/b/a Verizon Wireless (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

**RECITALS**

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

A. Licensor is the owner of rights-of-way, streets, utility easements, and similar property rights, as well as certain municipal facilities located in the public rights-of-way situated within the City limits of Grand Junction, Colorado (collectively, the “PROW”).

B. Licensee is duly organized and existing under the laws of the State of Colorado, and Licensee and its lawful successors, assigns, and transferees are authorized to conduct business in the State of Colorado.

C. Licensee owns and/or controls, maintains, and operates a wireless and fiber communications network serving Verizon Wireless customers (collectively, the “Network,” as more fully described in Section 1.1(j) below).

D. For purposes of operating the Network, the Licensee wishes to locate, place, attach, install, operate, control, and maintain antennas and other related wireless communication equipment consistent with Small Cell and Macro technology (collectively, the “Equipment”) in or on the PROW.

E. Licensee will comply with Licensor’s PROW and land use requirements; nothing in this Agreement may be construed to supplant, modify, alter or waive any provision of the Grand Junction Municipal Code and/or the related permitting requirements for land use, development, building, and right-of-way construction nor to confer upon or grant to Licensee any land use, development, building or right-of-way construction permit except as expressly set forth in this Agreement.

F. Licensee agrees to compensate Licensor in exchange for a grant and right to use and physically occupy portions of the PROW as provided herein.

G. For the purpose of this Agreement, the City is acting as a landlord and not acting in its 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 limitation 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.

## **AGREEMENT**

### 1. Definitions and Exhibits.

1.1 Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and 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 discretionary. This Section also includes, by this reference, the definitions as set forth in the Grand Junction Municipal Code §§ 21-10.020 and 21.04.030(q) and related sections.

Agreement means this Agreement for the Use of Public Right-of-Way for the Operation of a Wireless Network.

Attachment Fee means that fee described in Section 4.1 of this Agreement.

City means the City of Grand Junction, Colorado

Commencement Date means the first day of the month following the date that the Licensee has commenced installation of its Equipment at, in, or on the Licensed Area.

Equipment means antennas and other wireless communications equipment utilizing technology that is specifically identified, described, and approved by the Licensor as set forth in Exhibit A-1 attached to each Site Permit (as defined below) and includes, but is not limited to equipment shelter or cabinets, nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes, poles, towers and associated and appurtenant equipment on poles, towers or on the ground in the PROW deemed by Licensee necessary to operate the Wireless Site and uses intended thereto.

Facilities means poles, towers, street light poles, traffic poles, structures, infrastructure, and fixtures located within the PROW.

FCC means the Federal Communications Commission.

Grand Junction Municipal Code means the Grand Junction Municipal Code, and any regulations promulgated thereunder.

Hazardous Substance means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Interference means physical interference and radio frequency interference.

Laws means any and all applicable federal, state, and local laws, statutes, constitutions, code, Grand Junction Municipal Code, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity, agency 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.

Macro Facility means any Wireless Communications Facility that is not a Small Cell Facility as defined in §21.04.030(q) of the Grand Junction Municipal Code.

Municipal Facility/Facilities means the City's Facilities located within the ROW including, without limitation, streetlight poles and traffic poles, that are designated or approved by Licensor as being suitable for placement of Equipment.

Network, or collectively "Networks", means one or more of the wireless communications facilities operated by Licensee to serve its wireless carrier customers in the City.

Owner means a person with a legal or equitable interest in ownership of real or personal property.

Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting the PROW, including land use, development, right-of-way use/construction, building, and electrical permits.

Person means any corporation, limited liability company, partnership, proprietorship, individual, or organization, governmental entity, or any natural person.

Physical Interference means where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sign path.

Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

Public Rights-of-Way or PROW means the surface of and the space above and below the public roads, streets, highways, freeways, lanes, public way, alleys, courts, sidewalks, boulevards, parkways, drives, bridges, tunnels, and public utility easements, now or hereafter held by Licensor, or dedicated for use by Licensor or the general public for motor vehicle or pedestrian transportation.

Site Permit means the site-specific license granted by Licensor to Licensee and described in Section 3.2 below and shown on **Exhibit A**.



Small Cell Facility means the same as defined in §21.04.030(q) of the Grand Junction Municipal Code.

Term means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.

Wireless Communications Facility (also a “WCF”) means the same as a Wireless Communications Facility as defined in §21.04.030(q) of the Grand Junction Municipal Code.

Wireless Site means a location within the PROW selected for the Licensee’s deployment of its Equipment, which can be a Macro Facility, WCF or Small Cell Facility.

1.2 Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

(a) **Exhibit A:** Site Permit

**Exhibit A-1:** License Plans, Licensed Area, and Description of Licensor Facilities/Equipment to be Installed as Approved by Licensor

(b) **Exhibit B:** Operational and Design Criteria

(c) **Exhibit C:** Attachments to Licensor Traffic Signal Facilities

(d) **Exhibit D:** Licensee’s Minimum Limits of Insurance

In the event of any conflict between this Agreement, including the Exhibits, and the Grand Junction Municipal Code as it exists on the effective date of this Agreement, the Grand Junction Municipal Code prevails, except as federal or state law may preempt or act to modify the Grand Junction Municipal Code at present or in the future. Future amendments to the Grand Junction Municipal Code shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, so long as the Grand Junction Municipal Code changes do not alter any material rights granted herein, and except as federal or state law may preempt or act to modify the Grand Junction Municipal Code.

## 2. Grant of License and Terms.

2.1. License. Licensor hereby grants to the Licensee, a non-exclusive license to use and occupy the PROW throughout Licensor’s territorial boundaries, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace Equipment at each approved Wireless Site (“License”). This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Laws. Licensee shall install its Equipment consistent with applicable Laws. Nothing in this Agreement grants to, creates or vests in the Licensee any easement or other ownership of real property interest in the PROW.

2.2. Scope and Priority. Licensee's Equipment may be attached to structures in the PROW with the following order of priority of attachment, except as set forth below or as agreed between the Parties:

- (i) existing light pole Facilities in the PROW lawfully owned and operated by Licensor, a public utility company, or a third-party property Owner; then
- (ii) light poles installed by Licensee at its own expense in the PROW ; and then
- (iii) Municipal Facilities other than street lighting poles, but including traffic poles or other City improvements located in the PROW.

Locations will be prioritized based upon Licensee's technical and radio frequency needs and construction costs, but in any situation where Licensee has a choice of Equipment locations, the Parties shall mutually exercise good faith efforts to agree on attachments to poles in the order indicated above, provided that, in the case of using poles (a) such poles are at least equally suitable functionally for the operation of Licensee's Network and (b) the construction and installation burdens associated with such attachment over the length of the Term are equal to or less than Licensee's burdens to attach to a pole in the category(ies) below it.

2.3. Approval Process. The Parties agree that the application and approval process for the Equipment attachments referred to in 2.1 and 2.2 shall be conducted pursuant to Sections 21.04.030(q), and 12.28.010 *et seq* and related sections of the Grand Junction Municipal Code.

To comply with the siting preferences set forth in Section 21.04.030(q)(5) of the Grand Junction Municipal Code, Licensee shall submit a written paragraph with its application for concealed or nonconcealed Small Cell Facilities in the PROW as to why the Small Cell Facility is the preferred site. Licensee will comply with the priority for Small Cell Facilities as set forth in Section 2.2 of this Agreement. In the event a Small Cell Facility cannot meet the development standards of concealment set forth in Section 21.04.030(q)(11)(ii)(A) through (C) of the Grand Junction Municipal Code, Licensee may seek approval for a nonconcealed facility under Section 21.04.030(q)(11)(ii)(D), for which the height, separation and other restrictions set forth in subsection (ii) shall not apply, so long as the overall size of the facilities are not greater than those specified in the definition of "small cell facility" set forth in Section 21.04.030(q)(1).

2.4. Modifications.

(a) Minor Wireless Site Modifications. Notwithstanding anything in the Agreement to the contrary, modifications to the Equipment with like-kind or similar Equipment shall be subject to permitting required under applicable Laws, but shall not be subject to written approval of the Licensor to the extent that: (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, or loading impacts on the pole as approved by Licensor



or impact multi-modal traffic flow; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment and does not impact multi-modal traffic flow.

(b) Substantial Wireless Site Modification. If Licensee proposes to install Equipment which is different in any substantial way from the then-existing and approved Equipment, then Licensee shall first obtain the written approval for the use and installation of the Equipment from the Licensor, which approval shall not be unreasonably withheld, conditioned or delayed. In addition to any other submittal requirements, Licensee shall provide "load" (structural) calculations for all Facilities upon which it intends to modify Equipment in the PROW.

2.5. Permitted Use. Municipal Facilities may be used by the Licensee seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and installation, use and operation of Equipment, and not for any other purpose. Licensee shall, at its expense, comply with all Laws in connection with the use, installation, operation, maintenance, and replacement of Equipment within or on the PROW, including without limitation, obtaining the necessary Permits, traffic control plan approvals, or street occupancy fees for any work within the ROW by the Licensee and allowable work hours under the Grand Junction Municipal Code.

2.6. Additional Installations. Subject to the City's Zoning and Development, building and ROW construction regulations, Licensee may install its Equipment on other poles in the ROW lawfully owned and operated by third parties. Subject to obtaining the written permission of the Owner(s) of the affected property, and obtaining any required land use, development, building, ROW construction and electrical Permits (and paying associated Permit fees), the Licensor hereby authorizes and permits Licensee to enter upon the PROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on poles or other structures lawfully owned and operated by public utility companies or other property Owners located within the PROW as may be permitted by the public utility company or property Owner, as the case may be. In such situation, a Site Permit shall not be required nor shall an Attachment Fee be paid; however, Licensee shall furnish to the Licensor documentation in a form acceptable to the Licensor of such permission from the individual utility or property Owner responsible, and shall be required to obtain a ROW construction Permit (with payment of the Permit fee) from the City. Licensee will obtain all required Permits and approvals for installation on third party poles in the PROW pursuant to the Grand Junction Municipal Code. Nothing herein is intended to limit any rights Licensee may have in accordance with Laws or the Grand Junction Municipal Code; and nothing herein is intended to confer upon or grant to Licensee a land use, development, ROW construction or building permit.

2.7. Inventory of Wireless Sites. Licensee shall maintain a current inventory of Wireless Sites in the PROW throughout the Term. Licensee shall provide to Licensor an updated, current inventory within 30 days of the end of each year. If Licensee does not provide it in that timeframe, Licensor shall give Licensee one notice and an additional 30 day opportunity to use. The failure to provide the inventory shall not be a default under this Agreement. The inventory shall include the location of each installation, GIS coordinates, License Site ID #, type



of pole used for installation, pole Owner, and designation/type of installation for each Wireless Site Equipment installation within the PROW.

2.8. Unauthorized Installations. Any Wireless Site for which no Site Permit has been obtained is an Unauthorized Installation and is prohibited. Licensee shall have ten (10) days from the date of written notice by Licensor to submit a request for a Site Permit for the Unauthorized Wireless Site or, alternatively, to remove the Equipment and restore the property at Licensee's expense. If the request is denied, Licensee shall remove the Equipment from the PROW and restore the property at its expense within thirty (30) days, unless a different time period is agreed to by the Parties, and shall pay the required fees plus a penalty of 25% for the period of time between the unauthorized installation and the date of completion of removal. If the request is approved Licensee must pay the required fees plus a penalty of 25%, retroactively from the date of the unauthorized installation to the date of approval, for the Equipment, and the required fee thereafter.

3. Term of Agreement, Site Permits, Cancellation, Termination, Removal or Abandonment at Expiration.

3.1. Agreement Term. This Agreement shall be in effect for a period of twenty (20) years commencing on the date that this Agreement is fully executed (the "Execution Date"), and expiring on the later of (a) twentieth (20<sup>th</sup>) anniversary of the Execution Date, or (b) the expiration of the last Supplement Term (unless sooner cancelled or terminated as provided in this section) (the "Term"). Beginning in the month following the conclusion of the 17<sup>th</sup> year of the Agreement (i.e., three years before the Agreement terminates by its terms), the Parties will meet to discuss whether to extend the Agreement, and if so, under what terms and conditions. At that time, and provided that neither Party is in default, the Parties will discuss modifications which may be necessary, or may decide to replace it with a new agreement.

3.2. Site Permit Term. Each Site Permit shall be in effect for a period of ten (10) years commencing on the "Commencement Date" determined in accordance with each Site Permit, and expiring on the day before the tenth (10<sup>th</sup>) anniversary of the Commencement Date, unless sooner cancelled or terminated as provided herein (the "Site Permit Term"). Provided that Licensee is not in breach of a Site Permit, a Site Permit Term and License provided for herein will continue uninterrupted, and will automatically be extended for up to two (2), successive, five (5) year periods (each, a "Renewal Term"), with the first five-year extension of the Site Permit Term commencing immediately upon the expiration of the initial period of the Site Permit Term, and each additional five-year extension of the Site Permit Term commencing immediately upon the expiration of the preceding additional period of the Term, unless notice of non-extension is provided to Licensor by Licensee prior to the commencement of the succeeding Renewal Term. All of the provisions of this Agreement shall be in effect during the Site Permit Term and any extension of the Site Permit Term, provided, however, that Site Permits entered into during the last three (3) years of the Term of the Agreement (years 18, 19, and 20) will have a Site Permit Term of only five (5) years and will not automatically renew at the end of such five (5) year Site Permit Term.

3.3. Licensee Cancellation. Licensee may cancel this Agreement or any Site Permit before the date of expiration by providing the Licensor with ninety (90) days express written notice of cancellation. Any prepaid Attachment Fee shall be retained by Licensor. This Agreement and all Site Permits may only be cancelled or terminated as provided in this Agreement or any Site Permit.

3.4. Inactive Sites and Abandonment. Any Wireless Site or installation that has not been used to transmit or receive signals for period of 180 consecutive days shall be deemed inactive. Licensee shall notify Licensor within 10 days of any Inactive Site. A Wireless Site that has been inactive for six consecutive months shall be deemed abandoned. If Licensee abandons the use of a Municipal Facility or a Licensee-Owned Facility location, the Equipment for such Municipal Facility or the Equipment and Licensee-Owned Facilities shall be removed at the expense of Licensee. In the event Licensee is unable or refuses to remove such Equipment, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal. Abandoned poles that are not removed by the Licensee will become affixed to the realty and become the property of the Licensor.

#### Fees and Charges

. Licensee shall be solely responsible for the payment of all fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

##### 4.1. Attachment Fee.

(a) Annual Fee. As of the Commencement Date defined in each Site Permit, Licensee shall pay to Licensor an annual fee equal to \$200.00 for each Site Permit for attachment to a Municipal Facility. Beginning on the first anniversary of the Commencement Date and continuing throughout the Site Permit Term, including any extensions or additional extensions, the annual fee due hereunder shall increase by 1% per annum over the annual rental rate due during the immediate preceding year. The annual fee, plus any escalator, shall be the "Attachment Fee." The annual Attachment Fee shall not apply to or be charged for attachments to third-party Facilities or to the installation of Licensee's proprietary poles in the ROW.

(b) Fee Payment. The Attachment Fee is non-refundable and is payable within ninety (90) days of the initial Commencement Date, and on or before each subsequent annual anniversary of the Commencement Date during the Site Permit Term (or until such earlier time as such Site Permit is terminated). Upon agreement of the Parties, Licensee may pay the Attachment Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose. Licensor agrees to provide to Licensee a completed, current version of Internal Revenue Service Form W-9, or equivalent. Until the requested documentation has been received by Licensee, rent shall accrue in accordance with this Agreement but Licensee shall have no obligation to deliver rental payments. Upon receipt of the requested documentation, Licensee shall deliver the accrued rent as directed by Licensor.



4.2. Taxes. Licensee shall pay all applicable City, county and state taxes levied, assessed, or imposed on Licensee or on License's Equipment by reason of this Agreement.

4.3. Electric Meter. Licensee shall be responsible for paying all charges for any electricity furnished by a utility to Licensee and for charges for furnishing service to the Equipment. When the Equipment requires an electric meter, as determined by the utility provider, the Licensee shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as required by the electric provider for the operation of its Equipment. Licensee will request of the utility provider that it in good faith attempt to install power facilities which are inconspicuous as reasonably possible and yet consistent with electric code installation requirements.

4.4. Payments Made. All fees and/or additional payments shall be payable to Licensor at the address provided in Paragraph 18 of this Agreement for Licensor; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

Permits. No payment is due or collected under this Agreement for any land use, development, building or right-of-way construction permit issued in connection with the installation of Equipment at any Municipal Facility. However, all of the Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the Grand Junction Municipal Code regulating wireless communications facilities. Licensee or its designee may be required to apply for, obtain and pay the generally applicable fees for a land use, development, building or right-of-way construction permit issued by the City, and the ROW will be used according to the plans submitted by Licensee and approved by the City in issuing a Permit. Execution of this Agreement or any Site Permit does not constitute the issuance of a development, land use, building or right-of-way construction permit.

#### Basic Design and Installation Requirements for Using Municipal Facilities

. The basic design of the Equipment will be described in **Exhibit A-1** to each Site Permit. All of Licensee's construction and installation work for its Equipment on the Municipal Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Licensor-Owner pole location as a suitable site for Licensee's Equipment, but the existing Licensor-Owned pole needs to be replaced to accommodate the Equipment, then Licensee shall pay all costs related to replacing the Licensor-Owned pole, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, traffic signal, and/or other items attached to the existing Licensor-Owned pole to the Replacement Pole, and removal and salvage of the existing Licensor-Owned pole to the Licensor. Likewise, when Licensee and Licensor have agreed on an existing street light Facility location as a suitable site for Licensee's Equipment, but the existing pole needs to be replaced to accommodate the Equipment, then Licensee shall pay all costs related to removal and replacing the pole, including but not limited to

installation of the Replacement Pole, transfer of the streetlight fixtures, and/or other items attached to the existing pole to the Replacement Pole, and removal and salvage of the existing pole to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Licensor-Owned pole and the Replacement Pole. The installation or attachment of the Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

7. Common Conditions or Requirements Applicable to Site Permits Issued Under this Agreement.

7.1. Damage to Property. If Licensee damages or disturbs the surface or subsurface of any City Property, ROW or adjoining property, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance in accordance with the Grand Junction Municipal Code and City standards and specifications for such property. Licensee acknowledges its responsibility to separately adjust damage it actually causes to private property, if any, in the process of Licensee's exercise of its rights hereunder.

7.2. Public Emergency. In the event of an emergency or to protect the public health or safety, Licensor may require Licensee to deactivate such Equipment if any of Licensor's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance. In such case, Licensor will contact Licensee at 800-264-6620 to request immediate deactivation.

7.3. Pole Replacement.

(a) Subject to Section 7.3(f), if a Municipal Facility within a PROW needs replacement or repair due to a traffic accident or deterioration, and if Licensor does not repair or replace the Municipal Facility within a reasonable time, Licensee shall have the right to immediately replace the same at Licensor's cost, provided that such replacement meets all published Licensor standards and requirements; except that any such Municipal Facility that was reinforced or otherwise modified so as to make it more costly to replace will be replaced at Licensee's cost. In the event Licensee elects to replace the Municipal Facility, Licensee shall cooperate with Licensor to temporarily relocate its Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Equipment.

(b) Licensee may provide to Licensor, at Licensee's cost and with Licensor's express written permission, a spare pole sufficient to serve as a Replacement Pole, which will be stored at Licensor's Public Works Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace a damaged Municipal Facility.

(c) In the event Licensee provides a spare pole, and in lieu of Licensee performing the replacement, Licensor may use the spare pole to replace the damaged existing



pole within thirty (30) days of the damage, and shall deliver the damaged pole and any damaged equipment to the Yard.

(d) Licensor will contact Licensee to pick up the damaged Equipment and Licensee can reinstall its Equipment once the replacement pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use a Municipal Facility for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee.

(f) In the event Licensor elects to replace the Municipal Facility with a Replacement Pole provided by Licensee, Licensee shall be responsible for the cost of the Replacement Pole and for all costs relating to replacement and activation of Equipment on the pole and any ancillary Facilities related to Licensee's Network.

#### 7.4. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Wireless Facilities in the PROW. Licensee shall, at Licensor's direction and upon one hundred twenty (120) days prior written notice to Licensee, relocate such Wireless Facilities at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Wireless Facility is interfering with or adversely affecting proper operation of Licensor-Owned Poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. Licensor may also require Licensee to relocate, remove, modify or disconnect a Wireless Facility located in the ROW in the event of an emergency, when the public health or welfare requires such change (for example, without limitation, the Wireless Facility is interfering with or adversely affecting proper operation of Licensor-Owned Poles, traffic signals, communications, or other Municipal Facilities). In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Wireless Facility as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Wireless Facility at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within forty-five (45) days of the date of a written demand for this payment from the Licensor.

(b) Licensee shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring Licensor to take immediate action. In such event, Licensee's contact is: Network Operations Center - (800) 621-2622. If after two attempts to make contact by Licensor with no response, Licensor shall have the right to undertake any actions that Licensor may deem reasonably necessary to avoid damage to property or personal

injury, and Licensor's reasonable and documented costs for such undertaking shall be paid by Licensee.

(c) In the event of an assignment, sub-license or transfer pursuant to Section 14 of this Agreement, any such assignee or transferee shall immediately provide up dated or new contact information pursuant to this provision.

(d) In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

(e) In lieu of the relocation of Licensee's Equipment in the case of an abandonment or removal of a Municipal Facility as provided in Section 7.4(a)(iii), unless the Municipal Facility is needed for a legitimate Licensor purpose or the removal is directed for a legitimate Licensor purpose, Licensee shall have the right to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Site Supplement, at a commercially reasonable price commensurate with its then existing value. Licensee and Licensor shall document such transfer of ownership via a commercially reasonable Bill of Sale.

7.5. Non-exclusiveness. Subject to Section 7.6(d), the rights and privileges granted to Licensee under this Agreement, and each Site Permit granted pursuant to this Agreement, are nonexclusive; except that, once Licensee places a Wireless Site within or on the PROW, Licensor shall not control Wireless Sites owned by Licensee, and will not permit another carrier on the same Site unless Licensor confirms the subsequent carrier will not interfere with the Licensee's existing Wireless Site.

7.6. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

(a) Radio Frequency Interference. Licensee shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, or Licensor traffic, public safety or other communications signal equipment existing at the time of installation of the Equipment.

(b) Existing Uses. Licensee shall not interfere in any manner with the existing uses of Licensor property including ROW, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.

(c) Licensor Communications. Licensee shall not interfere in any manner with current or future Licensor or other governmental public safety communication.



(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. However, Licensor agrees that Licensor and/or any other tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment of Licensee.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering Party via telephone to Licensee's Network Operations Center at (800) 621-2622) or to Licensor at (303-840-9546), the interfering Party shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured. The Parties acknowledge that there will not be an adequate remedy at Law for noncompliance with the provisions of this Section 7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

#### Damage to Licensee's Equipment

In the event of any damage to Licensee's Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided, however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

#### 9. Title to Equipment.

9.1. Title to the Municipal Facility. Title to and control of the Equipment, exclusive of the Municipal Facility (original or replacement) used for support, but including ground mounted equipment, shall remain with Licensee and shall constitute Licensee's personal property and Equipment, and not fixtures or improvements attached to the land.

9.2. No Ownership in Licensor Property. Neither this Agreement, any Site Permit, nor any License issued herein, nor any Permit separately issued for installation of any Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-Owned poles or any Equipment is located, or any portion of the PROW. Additionally, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest and except as otherwise expressly provided herein, any right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3. "As Is" Condition. Licensee accepts the Municipal Facilities identified in any Site Permit, or any Replacement Pole, in its "AS IS" condition, without representation or

warranty of any kind by Licensor, or any Licensor officer, agent, or employee, and subject to all applicable Laws governing the use of the Licensor poles for Licensee's intended purpose.

#### Maintenance and Repair

. Subject to Section 7.3, Licensor shall maintain and keep the Municipal Facility containing Equipment in good condition and in accordance with Licensor's standard maintenance requirements, at its sole cost and expense. Licensee shall keep the Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair.

#### Hazardous Substances

. Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of the Municipal Facility or the PROW in which it is located in violation of any applicable Laws. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that Licensee is only using a small portion of the Municipal Facility and PROW and that Licensee shall not be responsible for any environmental condition or issue except to the extent resulting from Licensee's, its agents' or contractors' specific activities and responsibilities under this Agreement.

#### Indemnity

. Licensee shall indemnify and hold Licensor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of Licensee, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Licensor, or its employees, contractors or agents. Licensor will provide Licensee with prompt, written notice of any claim covered by this indemnification; provided that any failure to provide any such notice, or to provide it promptly, shall not relieve Licensee from its indemnification obligation in respect of such claim, except to the extent Licensee can establish actual prejudice and direct damages as a result thereof. Licensor will cooperate appropriately with Licensee in connection with Licensee's defense of such claim. Licensee shall defend Licensor, at Licensor's request, against any claim with counsel reasonably satisfactory to Licensor. Licensee shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each Licensor and without an unconditional release of all claims by each claimant or plaintiff in favor of Licensor.

#### 13. Insurance Requirements.



13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in the attached **Exhibit D**. Within 30 days of execution of this Agreement, but prior to the execution of a Site Permit, Licensee also shall submit a Certificate of Insurance to Licensor, which Certificate shall comply with the insurance requirements set forth in this Agreement.

13.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

13.3. Licensor's Insurance. Licensee acknowledges that Licensor is self-insured to a certain extent and participates in a governmental insurance pool in addition to maintaining self-insurance reserves. Licensor will not name Licensee as an insured party under any of its policies of insurance. Licensor is protected by common law and statutory governmental immunity and nothing in this Agreement shall be deemed or construed to waive such protections. Licensor is not responsible for and will not insure any of Licensee's property.

14. Assignment/Subletting.

14.1. This Agreement and each Site Permit granted herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder, except that Licensee's Macro Facilities will be designed to support co-location of other carriers' equipment and Licensee can sub-lease antenna space on such facilities to other carriers. Subject to Section 14.3 below, the related rights and privileges may not be assigned or otherwise transferred without the express written consent of Licensor, which consent shall not be unreasonably withheld, conditioned or delayed. Any Agreement which is assigned or otherwise transferred pursuant to this Section shall be equally subject to all the obligations and privileges of this Agreement, including any amendments, which will remain in effect, as if the assigned Agreement was the original Agreement. After assignment, this Agreement, including any amendments, shall be binding on the assignee to the full extent that was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Equipment to a Licensor-Owned pole shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

14.3. Notwithstanding anything to the contrary in this Section 14, this Agreement and/or any Site Permit and/or Permit approved by the Community Development Department may be sold, assigned or transferred by Licensee, without advance notice to or the consent of Licensor, to (i) any entity in which Licensee holds a controlling or similar interest; (ii) any entity which holds a controlling equity or similar interest in Licensee; (iii) any entity under common control with Licensee; (iv) any other entity that is currently operating in the City of Grand Junction and is in full compliance with all obligations to the Licensor; (v) any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Municipal Facility is located by reason of a merger, acquisition or other business reorganization, provided that such acquiring entity has debt to equity and profitability ratios consistent with mature companies in business for five or more years in the same or similar business and agrees to comply with federal, state, and local laws, and Licensee and the new entity represent to Licensor that the new entity has not had a decision entered against the new entity for a material violation of a local permit; or (vi) to any entity with the "Verizon Wireless" name as part of the entity name. Licensee shall provide written notice to Licensor within thirty (30) days of Licensee completing a transaction with an entity as covered in subsections (i) through (iii) and (iv)) of this Section and ninety (90) days written notice to the Licensor of a transaction covered in subsection (iv) and (v).

15. Default.

15.1. Default of Licensee.

a. Except for unauthorized installations which are subject to other provisions of this Agreement, Licensor shall provide Licensee with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensee may: (a) demonstrate that a violation does not exist; (b) cure the alleged violation; or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date, subject to Licensor's written approval, which approval will not be unreasonably withheld.

b. If Licensee fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in 30 days if Licensee has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Licensor may declare in writing that Licensee is in default.

15.2. Default of Licensor.

a. Licensee shall provide Licensor with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensor may: (a) demonstrate that a violation does not exist; (b) cure the alleged violation; or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date; provided, however, that such plan shall be subject to Licensee's written approval where



Licensee's Equipment or operations will be affected by the corrective action, which approval will not be unreasonably withheld.

c. If Licensor fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in 30 days if Licensor has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Licensee may declare in writing that Licensor is in default.

15.3. Termination/Revocation. In the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement if the default affects all Site Permits and the Agreement as a whole, or any Site Permit subject to the default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Law. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If Licensee undertakes any such performance on Licensor's behalf and Licensor does not pay Licensee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, Licensee may offset the full undisputed amount due against all fees due and owing to Licensor under this Agreement until the full undisputed amount is fully reimbursed to Licensee.

#### Bankruptcy

. The Parties expressly agree and acknowledge that it is their intent that in the event Licensee shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code"), for the purposes of proceeding under the Bankruptcy Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Bankruptcy 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 with the exception that Licensor waives any requirement for Licensee to assume or reject this Agreement earlier than prior to confirmation of a plan. Any person or entity to which Licensee's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act to have assumed all of the obligations of Licensee arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Licensor 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 Licensor, shall be the exclusive property of Licensor, and shall not constitute property of Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust for the benefit of Licensor and be promptly paid to Licensor.

#### Surrender

. Within ninety (90) days of the expiration of the Term of any Site Permit, or upon the earlier termination thereof, Licensee shall remove all Equipment, at its sole expense, shall repair any damage to the Municipal Facilities or the ROW caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted.

Notices

. Any notice, request, demand, statement, or consent herein required or permitted to be given by either Party to the other hereunder, shall be in writing signed by or on behalf of the Party giving the notice and addressed to the other at the address as set forth below:

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

Licensor                      City of Grand Junction  
   250 N. 5<sup>th</sup> Street  
   Grand Junction, CO 81501  
   Attn: Scott Hockins

With copy to:                      City of Grand Junction  
   250 N. 5<sup>th</sup> Street  
   Grand Junction, CO 81501  
   Attn: Shelly Dackonish, Senior Staff Attorney

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

18.1. Emergency Contact. As set forth above, Licensee shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring Licensor to take immediate action. In such event, Licensee's contact is: Network Operations Center - (800) 621-2622.

19. Miscellaneous.



19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all negotiations, understandings or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by, construed, and modified in accordance with the Laws of the State of Colorado, and applicable federal Law.

19.4. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms. Licensor hereby designates, and authorizes, the Licensor's City Administrator or designee to execute all Site Supplements entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

19.5. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both Licensor and Licensee expressly reserve all rights they may have under law to the maximum extent possible, and neither Licensor nor Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

19.6. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any Term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.7. Limitation of Liability. Except for indemnification pursuant to Section 12, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.8. 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.

19.9. No Third-Party Beneficiaries. This Agreement benefits only the Parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

19.10. Other ROW Users. The Parties understand and agree that Licensor permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, Licensor shall not be liable to Licensee for any damage caused by those persons or entities.

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



IN WITNESS WHEREOF, the Parties have executed this Agreement as of this 30 day of July, 2018 (the "Execution Date").

LICENSOR:  
City of Grand Junction, a Colorado Home  
Rule Municipality

LICENSEE:  
CommNet Cellular Inc.  
d/b/a Verizon Wireless

By: *Barbara Traylor Smith*  
~~Rick Taggart~~ ~~Barbara Traylor Smith~~  
Its: President of the City Council

By: *Steve LeVar*  
Print Name: Steve LeVar  
Its: Director Network Field Engineering

ATTEST:

*W Winkelman*  
Wanda Winkelman  
City Clerk



APPROVED AS TO FORM:

*Shelly S. Dackonish*  
Shelly S. Dackonish, Senior Staff Attorney

## EXHIBIT A

### Form of Site Permit

#### Site Permit

This Site Permit ("Site Permit"), made this \_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date") between the City of Grand Junction, a Colorado home rule municipality, with an address of \_\_\_\_\_, hereinafter designated "Licensor" and CommNet Cellular Inc. d/b/a Verizon Wireless, with its principal offices at c/o Verizon Wireless, 180 Washington Valley Road, Bedminster, New Jersey 07921, hereinafter designated "Licensee":

1. Site Permit. This is a Site Permit as referenced in that certain Agreement for the Use of Public Right-of-Way for the Operation of a Wireless Network, between Licensor and Licensee dated \_\_\_\_\_, 2018 ("Agreement"). All of the terms and conditions of the Agreement are incorporated by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Site Permit, the terms of this Site Permit shall govern. Capitalized terms used in this Site Permit shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

#### 20. Project Description and Locations.

Licensee shall have the right to use the Municipal Facility for Equipment at the designated areas in the PROW or place its own Equipment and pole at the designated areas in the PROW as further described in Exhibit A-1 attached hereto (the "Licensed Area").

#### Equipment

. The Equipment to be installed at the Licensed Area is described in Exhibit A1 attached hereto.

#### Term

. The term of this Site Permit shall be as set forth in Section 3.2 of the Agreement.

#### Fees

. The initial annual Attachment Fee for the Term of this Site Permit shall be \$200 as determined in accordance with the Agreement. There shall be no charge to Licensee to attach Equipment to a third party pole, or to place Licensee's proprietary pole in the PROW, except that Licensee shall be responsible for payment of land use, development, building, and construction in the right-of-way permit fees and posting bonds as required thereby.

#### Commencement Date



. The first day of the month following the date Licensee has commenced installation of its Equipment at the Licensed Area.

Approvals/Fiber

. It is understood and agreed that Licensee's ability to use the Licensed Area is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee use of the Licensed Area as set forth above. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expired, lapsed, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain or maintain, in a satisfactory manner, any fiber or power connection; or (v) Licensee determines that the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate this Site Supplement. Notice of Licensee's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. All fees paid to said termination date shall be retained by Licensor. Upon such termination, this Site Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, Licensee shall have no further obligations for the payment of Rent to Licensor.

26. Miscellaneous.

[insert any additional provisions].

[Signature page follows]

EXECUTED to be effective as of the date shown above.

LICENSOR:

CITY OF GRAND JUNCTION

By: \_\_\_\_\_  
[NAME]  
[TITLE]

ATTEST:

\_\_\_\_\_  
[NAME], [TITLE]

APPROVED AS TO FORM

BY: \_\_\_\_\_  
[NAME], [TITLE]

LICENSEE:

CommNet Cellular Inc.  
d/b/a Verizon Wireless

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibits:**  
Exhibit A-1



**EXHIBIT A-1**

**Licensee Plans, Licensed Area, and Description of Licensee Facilities/Equipment  
to be Installed as Approved by Licensor**

## EXHIBIT B

### Operational and Design Criteria

A. Operational Standards.

- (a) Radio Frequency Standards. All Equipment shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for Equipment are made to Licensor, Licensor may request Licensee provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the Equipment may not be in compliance, Licensor may request and Licensee shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, Licensor finds the facility does not meet federal standards, Licensor may require corrective action within a reasonable period of time, and if not corrected, may require removal of the Equipment as an unauthorized use under this Agreement. Any reasonable costs incurred by Licensor, including reasonable consulting costs to verify compliance with these requirements, shall be paid by Licensee upon demand by Licensor or, if such costs remain unpaid after demand, Licensor may recover such costs by the same manner and method authorized to recover nuisance abatement costs under the Grand Junction Municipal Code.

B. Design Standards.

- (a) The requirements set forth in this Exhibit shall apply to the location and design of all Equipment governed by this Agreement as specified below; provided, however, Licensor may waive these requirements if it determines the goals of this Exhibit are better served thereby. To that end, Equipment shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.

(1) General Principals.

- a. All Equipment covered by this Agreement shall be as architecturally compatible with the surrounding area as feasible;
- b. All electrical, communication, and other wiring to Equipment components, including radios, antennae and backhaul connections, shall be fully concealed, internal to the structure where possible and shrouded in all other instances;



- c. Height or size of the proposed Equipment and any Replacement Pole should be minimized and conform to the standard form factor of Licensor Municipal Facility to the maximum extent practicable;
  - d. Equipment shall be sited in a manner that takes into consideration its proximity to residential structures and residential district boundaries, uses on adjacent and nearby properties, and the compatibility of the facility to these uses, including but not limited to proximity of Wireless Site to first and second story windows;
  - e. Equipment shall be designed to be compatible with the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor Municipal Facility to the maximum extent practicable; and
  - f. Equipment and any associated landscaping fencing shall be designed and located outside of intersection sight distances and in accordance with the City's Roadway Design and Construction Criteria Manual, if any.
- (2) Camouflage/Concealment. All Equipment shall, to the extent possible, match the appearance and design of existing Municipal Facilities or third party pole adjacent to the Wireless Site; and when not technically practicable, that Equipment is to use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, landscaping, or other design options that will blend the Equipment to the surrounding natural setting and as built environment. Design, materials and colors of Equipment not identical to existing Licensor Municipal Facilities shall otherwise be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.
- a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where Equipment is located in areas of high visibility, they shall (where possible) be *designed to minimize their profile*.
  - b. All Equipment, including antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
- (3) Hazardous Materials. No hazardous materials shall be permitted in association with Equipment, except those necessary or requested for the operations of the Equipment and only in accordance with all applicable laws governing such materials.

- (4) Siting.
  - a. In the event of Equipment located in a ROW, no portion of any Equipment may extend beyond the ROW without prior approval(s).
  - b. Collocation. Equipment may be required to be designed and constructed to permit the support structure to accommodate equipment from at least two (2) wireless service providers on the same support structure unless Licensor approves an alternative design. Licensee shall not unfairly exclude a competitor from using the same facility or location.
  - c. Equipment shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below City standards unless it is the only option.
- (5) Lighting. Equipment shall not be artificially lit, unless required by the FAA or other applicable governmental authority, or the Equipment is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, Licensor may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- (6) Landscape and Fencing Requirements.
  - a. Ground-mounted Equipment shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below City standards.
  - b. Ground-mounted Equipment shall be landscaped with a buffer of plant materials that effectively screen the view of the Equipment from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
  - c. In locations where the visual impact of the Equipment would be minimal, the landscaping requirement may be reduced or waived altogether by Licensor.
- (7) Noise. Noise generated on the site must not exceed the levels permitted by local standards, except as may be expressly permitted by local approval.
- (8) Additional design requirements shall be applicable to the various types of Equipment as specified below:
  - a. Base Stations. Any antenna installed on a structure other than a Municipal Facility (including, but not limited to the antennas and accessory equipment) shall be of a neutral, non-reflective color that is identical to, or



closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

- b. Alternative Tower Structures located in the Right-of-Way. In addition to the other criteria contained in this Exhibit and applicable local codes, an Alternative Tower Structure located in the ROW shall:
  - i. With respect to its pole-mounted components, be located on an existing utility pole serving a utility; or
  - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Tower Structure will be located; or
  - iii. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by Licensor and any communications companies on utility poles near the Alternative Tower Structure;
  - iv. Be sized to minimize the negative aesthetic impacts to the right-of-way;
  - v. Be designed such that antenna installations near traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be negatively impacted and so as not to create a visual distraction to vehicular traffic;
  - vi. Require any ground mounted equipment be located in a manner necessary to address both public safety and aesthetic concerns under local requirements, and may, where appropriate, require a flush-to-grade underground equipment vault; and
- c. Related Accessory Equipment. Accessory equipment for all Equipment shall meet the following requirements:
  - i. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
  - ii. For Small Cell facilities, the total footprint coverage area of the Accessory Equipment shall not exceed thirty-six (36) square feet;
  - iii. Accessory equipment, including but not limited to remote radio units, shall be located out of sight by locating behind landscaping, parapet walls, within the pole or, where technically feasible and will not have the effect of prohibiting the provision of personal wireless services, underground. Where such alternate locations are

not available, the accessory equipment shall be camouflaged or concealed.

- iv. Notwithstanding i-iii, accessory equipment shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. The location of Facilities and Equipment must comply with the Americans With Disabilities Act and every applicable local, state, and federal law and regulation. No Facilities or Equipment may be located or maintained in a manner that causes unreasonable interference. "Unreasonable interference" means any use of the right-of-way that disrupts or interferes with its use by Licensor, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference, irrespective of the cost to Licensee associated with such alternative installation or attachment method. "Unreasonable interference" includes any use of the right-of-way that disrupts vehicular or pedestrian traffic (including traffic view triangles), any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare (including creation of overhead hazards falling into vehicular or pedestrian traffic on driving or walking surfaces).
- (9) Setbacks and Separation. The following minimum setbacks and separation requirements shall apply to all Equipment installed pursuant to this Agreement; provided, however, Licensor may, as set forth in the Grand Junction Municipal Code, reduce standard setbacks and separation requirements.



## EXHIBIT C

### Attachments to Licensor

#### Traffic Signal Facilities

##### Traffic Signal Pole Requirements

Any traffic signal poles considered for Licensee Equipment placement shall be subject to review and approval by City of Grand Junction Engineering and Public Works Director. The Director may approve, reject, or require modifications to any installation if he/she deems it in the best interest of the City of Grand Junction.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading or other structural conditions will require an engineering analysis signed and stamped by a Colorado licensed professional engineer. Any proposed loading or other structural change such as additional pole penetrations, weight of equipment, or wind loading shall also be reviewed and approved by the original pole manufacturer. Costs to prepare and review this information will be borne by Licensee.

Traffic signal poles already supporting the City of Grand Junction Equipment such as wireless links, cameras, or other externally mounted equipment are not eligible to be considered for Licensee Equipment placement. Licensee Equipment placed on traffic signal poles may be required to be removed or relocated at any time if the City infrastructure is needed for placement of City Equipment.

Mounting of Equipment external to the pole shall be with stainless steel banding. In no case shall Equipment be bolted to the pole or use other mechanical fasteners.

All Equipment shall be mounted to have minimum visual profile, and low profile mounting brackets and antennas may be required. No antennal shall extend higher than the current top of pole. All Licensee Equipment mounted on City traffic signal poles shall match the pole in color, currently Federal Green Davis color 14056.

Installations on signal poles shall be physically separated from City wiring. A single 2' or smaller duct shall be installed inside each pole in use as a cableway. At the City's discretion the cables may exit the pole through existing conduit in the pole foundation or a new exit point may be required. In no case will wire or conduit penetration through handhole covers be permitted. External cabling attached to the traffic signal pole will not be permitted.

Licensee Equipment shall be bonded to the Licensee's electric meter pedestal following National Electric Code standards. The traffic signal structure shall not be considered a suitable ground path.

Any ground mounted Equipment such as cabinets must be placed a minimum of 30' from any existing traffic signal pole or traffic signal cabinet. Ground mounted Equipment must be

placed in an underground vault where feasible, or located in an area with minimal visual impact as determined by the City. Above grade cabinets shall not be placed in intersection sight distance triangles.

Licensee cables, conduits, mounting hardware, or other equipment must not interfere with installation, access to or operation of any City owned devices. Specific clearances may be required and will be reviewed on a case by case basis.

Analysis and physical test data must be provided to show the proposed Equipment will not interfere with the City's wireless network currently operating in the 900 MHz and 5.8 GHz frequencies. If City used frequencies change, Licensee may be required to show their Equipment will continue to operate without interference. Licensee proposed Equipment must also be tested and reviewed to avoid interference with other City owned Equipment such as radar or microwave based detection Equipment.

For installations on signal poles, Licensee's crew foreman or onsite supervisor must hold at least a Level II IMSA Traffic Signal Field Technician certification, and be onsite for any work.

Any installation or servicing of Equipment located on traffic signal poles shall be coordinated with the City's Traffic Operations and Traffic Engineering groups a minimum of three (3) business days in advance.

Equipment located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Licensee due to any work performed by or authorized by the City. Equipment removal or resets shall be completed by Licensee within 72 hours of notice by the City. If work is not completed within the 72 hour window, the City may remove Licensee Equipment and charge Licensee reasonable costs for labor and Equipment. No warranty of condition of Licensee Equipment will be made. Under emergency conditions the City may remove any Equipment it deems necessary



## EXHIBIT D

### Licensee's Minimum Limits of Insurance Requirements

1. Licensee and its subcontractors shall carry during the Term, at their own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a limit of liability of \$2,000,000 per occurrence and \$2,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (iii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of \$1,000,000; (iv) Workers' Compensation Insurance as required by law; and (v) employers' liability insurance with limits of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 bodily injury disease policy limit.

2. All of the insurance coverages identified in Section 1, except the workers' compensation insurance and employer's liability, shall apply to and include the City as an additional insured as their interest may appear under this Agreement, and shall provide a defense and indemnification to the City, except in circumstances where the City was or is negligent or engaged in willful misconduct, regardless of the City's fault or wrongdoing. The insurance shall indemnify and defend the City against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the City's benefit. Further, the insurance coverages identified in Section 1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City.

3. Upon execution of this Agreement, Licensee shall provide the City with a Certificate of Insurance and blanket additional insured endorsements evidencing of the coverage required by this **Exhibit D**.

4. Upon receipt of notice from its insurer(s), Licensee shall provide thirty (30) days advance notice to the City in the event of cancellation of any coverage.

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

6. All of the insurance policies Licensee and its subcontractors are required to maintain pursuant to this **Exhibit D** shall be obtained from insurance carriers having an A.M Best rating of at least A-VII.

#### 1. General.

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a Certificate of Insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance Licensee licensed, authorized or permitted to transact

business in the State of Colorado, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. Licensee shall, and shall require any of its contractors to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged the insurances set forth below.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than Licensor, has an insurable interest in the property required to be covered.



(a) The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by Licensor.

(b) The Builders Risk/Installation Floater insurance must include as named insureds, Licensor, Licensee, and all tiers of contractors and others with an insurable interest in the Work.

(c) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation. Such notice shall be sent directly to Attn: Risk Manager, Jay Valentine, (fax no. (970) 244-1546) or emailing (jayva@gcity.org) a copy of the notice to the Risk Manager.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability, include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee.

