

## MASTER LICENSE AGREEMENT

This Master License Agreement (the "*Agreement*") made this \_\_\_ day of \_\_\_\_\_, 20\_\_, between the City of Sioux Falls, South Dakota, with its principal offices located at 224 West 9<sup>th</sup> Street, Sioux Falls, South Dakota 57104, hereinafter designated LICENSOR, and CommNet Cellular Inc. d/b/a Verizon Wireless, with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number (866) 862-4404), hereinafter designated LICENSEE. LICENSOR and LICENSEE are at times collectively referred to hereinafter as the "*Parties*" or individually as the "*Party*."

### WITNESSETH

WHEREAS, LICENSOR is the owner of, or holds a leasehold or other possessory interest in, certain Light Poles (as defined herein) located within public rights of way and public parks, within the boundaries of the City of Sioux Falls, South Dakota (the "*City*"), all within the geographic area of a license held by LICENSEE to provide wireless services issued by the Federal Communications Commission ("*FCC*"); and

WHEREAS, LICENSEE desires to install, maintain, and operate communications and related equipment, conduit, utilities, and appurtenances in and/or upon certain of LICENSOR's Light Poles; and

WHEREAS, LICENSOR and LICENSEE desire to enter into this Agreement to define the general terms and conditions which govern their relationship with respect to particular Sites (as defined herein) at which LICENSOR may wish to permit LICENSEE to install, maintain, and operate its Equipment on said Light Poles as hereinafter set forth; and

WHEREAS, LICENSOR and LICENSEE acknowledge that they will enter into a license supplement ("*Supplement*"), a copy of which is attached hereto as **Exhibit A**, with respect to each particular Light Pole and Site approved by the LICENSOR, as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Parties hereto, for themselves, their successors and assigns, do hereby covenant and agree as follows:

### DEFINITIONS

**BUSINESS DAY.** For purposes of this Agreement, "*Business Day*" shall mean any day Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. local time, except for those days on which commercial banks are authorized or required by law to be closed or a federal holiday in the United States of America.

CITY PARKS. For purposes of this Agreement, "*City Parks*" shall mean the public parks, administered by LICENSOR's Parks and Recreation Department.

ENGINEERING DESIGN STANDARDS. Engineering Design Standards approved by the Sioux Falls City Council by Ordinance.

EQUIPMENT. For purposes of this Agreement, "*Equipment*" shall mean communications equipment owned by the LICENSEE, including conduit, utilities, and appurtenances.

LIGHT POLES. For purposes of this Agreement, "*Light Poles*" shall mean poles used or to be used for LICENSOR's lighting in the Right of Way and City Parks, and Light Poles in Other Areas as may be approved by LICENSOR in a Supplement. The term Light Poles includes Non-Standard Light Poles; however, the term does not include signal lights, traffic poles, power poles, traffic devices, or light poles for sports fields or arenas, stadium lighting, parking lots, or other lighting of any kind, and does not pertain to poles or other structures owned by others regardless of whether maintained by the LICENSOR for lighting or any other purpose.

MAKE-READY COSTS. For purposes of this Agreement, "*Make-Ready Costs*" shall mean materials, labor, engineering, supervision, site work, and tree trimming costs required in connection with LICENSEE's installation or modification of Equipment on a Light Pole. Make-Ready Costs shall include the costs of changing out poles (to the extent LICENSOR will be required to change out poles under this Agreement), including the cost of installation and removal of guys, anchors and equipment, temporary construction, and all other necessary construction in accordance with applicable industry and safety standards. In addition, Make-Ready Costs include reimbursement to LICENSOR for its removal of lights and lighting equipment and LICENSOR owned communications and/or security equipment, if any, from existing Light Poles not being used jointly by LICENSOR and LICENSEE and reinstalling them on replacement Light Poles installed by LICENSEE for joint use by LICENSOR and LICENSEE. Make-Ready Costs shall also include negotiated costs for review or installation in Other Areas. Make-Ready Costs shall also include reimbursement for costs paid by the LICENSOR to third-party consultants, for plan review, installation, or other costs associated with LICENSEE's proposed use of Light Poles, including reimbursement to engineers, and others, for the first two (2) installations of each of the following types of attachments: (i) up to \$2,000 in the aggregate for Light Poles in the Right of Way (other than Non-Standard Light Poles); (ii) up to \$2,000 in the aggregate for Non-Standard Light Poles in the Right of Way; and (iii) up to \$2,000 in the aggregate for Light Poles in City Parks (including Non-Standard Light Poles). Notwithstanding, Make-Ready Costs shall not include fees which may be separately charged to LICENSEE pursuant to City Ordinance for plan review, permits, and inspections required in connection with any work to be performed by LICENSEE in LICENSOR's Right of Way, City Parks, or Other Areas.

NON-STANDARD LIGHT POLE. Any decorative Light Pole needed for LICENSEE's use under this Agreement, whether or not such decorative Light Pole is located within a historic district.

OTHER AREAS. Property owned and managed by the LICENSOR other than Right of Way or City Parks.

PROPERTY. For purposes of this Agreement, "*Property*" shall mean City Parks and City Right of Way within the City of Sioux Falls, South Dakota, as described above, or Other Areas as may be approved by LICENSOR pursuant to a fully-executed Supplement.

RIGHT OF WAY. For purposes of this Agreement, "*Right of Way*" or "*ROW*" shall mean right of way dedicated to the public and accepted by the LICENSOR in trust for public use or acquired in fee by the LICENSOR for purposes of maintaining streets and street improvements, including ten (10) foot utility easements platted in the front ten (10) feet of platted lots which are permitted for use by utilities other than those operated by LICENSOR. However, the term Right of Way does not include any easements acquired by the LICENSOR that are limited to municipal uses only, such as sewer, water, drainage, or other municipal purposes, regardless of whether such easements are acquired through the platting process or any other acquisition (and regardless of whether such easements are referred to elsewhere as Right of Way) and shall not include any place or property that does not contain or will not contain streetlights owned and maintained by the LICENSOR.

SITE. For purposes of this Agreement, "*Site*" shall mean LICENSOR's Light Pole in the Right of Way, Light Pole in City Park, or Light Pole in Other Areas as may be approved by LICENSOR pursuant to a fully-executed Supplement, licensed to LICENSEE, and such areas as necessary to provide access for utilities, ingress and egress, and to maintain LICENSEE's Equipment (to the extent LICENSOR owns and holds control over the property to be used for ingress and egress), as approved in each Supplement to this Agreement.

SUPPLEMENT. For purposes of this Agreement, "*Supplement*" shall mean a License Supplement in the form shown in **Exhibit A** to this Agreement and signed by the Parties.

## I. SCOPE

a. By this Agreement, LICENSOR agrees that LICENSEE may install and maintain its Equipment under the terms and conditions in this Agreement and each applicable Supplement to be entered into from time to time in connection with each attachment of Equipment to a Light Pole.

b. Subject to the foregoing **Paragraph I.a.**, LICENSEE may install and maintain Equipment within LICENSOR's Properties, with such installations to be limited to, when feasible or available, replacement of existing Light Poles or the use of existing Light Poles (with all such Light Poles to be used jointly by LICENSOR and LICENSEE). However, if existing Light Poles are not available for use or replacement, the Parties acknowledge that this Agreement does not limit any rights LICENSEE may have to install and maintain LICENSEE-owned poles ("*LICENSEE Poles*") at other locations within LICENSOR's Right of Way, with the design, location, and placement as approved by LICENSOR pursuant to LICENSOR's Ordinances, the Uniform Manual (as defined in **Paragraph III.c**), or other regulations then in effect. With respect to LICENSEE Poles to be installed and maintained in City Parks or Other Areas, the Parties may enter into a Supplement pursuant to the terms and conditions of this Agreement or, at LICENSOR's discretion, a separate mutually-approved agreement may be required. In the case of LICENSEE Poles in City Parks, approval shall be at the sole discretion of LICENSOR's Director of Parks and Recreation or his or her designee. In the case of Other Areas,

any such approval (regardless of whether it involves replacement of Light Poles, use of existing Light Poles, LICENSEE Poles, or otherwise) shall be in the sole discretion of the LICENSOR. LICENSOR makes no representation or warranty as to the condition of its existing Light Poles.

c. Applications for Other Areas may be considered under this Agreement upon mutual consent of the Parties or may be subject to separate negotiations for a separate agreement, including specific application fees, rental fees, and/or reimbursement for consulting fees and Make-Ready Costs.

## II. LICENSEE'S REQUESTS

a. Before LICENSEE shall replace or make use of any of LICENSOR's existing Light Poles within any Property, the Site licensed to LICENSEE shall be as described in the applicable Supplement, as executed by the Parties. LICENSEE shall request permission in writing, which writing shall be made by means of a completed application submitted in compliance with the procedures set forth in this Article.

b. Approval of this Agreement by LICENSOR shall be in the form of an approved City Council Ordinance. Following said approval of this Agreement, each individual Supplement may be executed by LICENSOR's Mayor or his/her designee after approval of LICENSEE's application to be granted by applicable City Departments, including the Planning and Development Department, the City's Director of Public Works, or his/her designee (with regard to Right of Way Sites), the City's Director of Parks and Recreation, or his/ her designee (with regard to City Parks Sites and LICENSEE Poles in City Parks), or the Director (or his/her designee) of any other department of LICENSOR that owns or controls Light Poles or property on which LICENSEE Poles would be placed in Other Areas.

c. LICENSEE shall have the non-exclusive right, at its sole cost and expense, to use each Site, as identified in each individual Supplement, for the purpose of constructing, maintaining, repairing, and operating a communications facility and uses incidental thereto, in a manner consistent with the applicable Supplement ("*Approved Use*").

Regarding each individual Application: each application for installment of a new LICENSEE Pole outside of Right of Way, replacement Light Pole, and/or attachment of Equipment on Light Poles must be complete and must include the applicable application fee as provided in **Paragraph II.f**. After the application fee has been paid, the LICENSOR shall review the plans and the application. An application for the installation of a new LICENSEE Pole and/or attachment of LICENSEE's Equipment to a replacement or existing Light Pole in Right of Way or City Parks may be denied for reasons reasonably related to capacity, safety, reliability, or engineering concerns, or if the LICENSEE Pole or proposed attachment would violate LICENSOR's Ordinances (including Engineering Design Standards, if any have been approved by Ordinance), the Uniform Manual, or other applicable laws of general applicability related to building codes, electrical codes, or related standards, including but not limited to height, size, traffic concerns (collectively, the "*Code Standards*"), zoning, aesthetics (including color and the ability to blend with historic features in historic districts and park features in City Parks), or the requirements of this Agreement. Notwithstanding the foregoing, any applications pertaining to Other Areas may be denied at the discretion of the LICENSOR, and, further, applications for

LICENSEE Poles in City Parks may be denied at the discretion of the LICENSOR's Director of the Parks and Recreation Department or his or her designee. Within sixty (60) calendar days after the receipt of such application, LICENSOR will notify LICENSEE in writing (by electronic means) whether the application (and the plans submitted with the application) are accepted, approved, denied, or denied subject to resubmittal. LICENSOR's failure to respond within sixty (60) calendar days does not create a "deemed acceptance" or "deemed rejection" of the application. LICENSOR shall document the basis for any denial, including the specific provisions of the Law(s) on which the denial was based (if applicable), and send the documentation (either electronically or by U.S. mail) to the LICENSEE on or before the day that it denies an application.

When LICENSOR provides notice that an application is "subject to resubmittal" or similar language, such application is incomplete, and corrections or additional information is required as part of the plan review process. If LICENSOR provides such notice within ten (10) calendar days of LICENSEE's submission of the application, the shot clock shall "reset" on the day the LICENSEE cures the deficiencies identified by the LICENSOR by resubmitting the corrected material or additional information. If LICENSOR provides such notice more than ten (10) calendar days after the submission of the application, the shot clock shall "pause" as provided under FCC 18-133 (as defined in **Paragraph II.f**, below). The shot clock will restart upon resubmittal by the applicant without paying an additional application fee. If the deficiency is not cured within a sixty (60) calendar day period after LICENSOR delivers notice that the application is "subject to resubmittal" or otherwise incomplete, then unless the Parties have agreed otherwise in writing, a new application and application fee are required for that Site. The LICENSOR shall approve or deny any application or resubmitted application within the time provided in this Agreement, unless other timeframes are imposed by law for applications filed under this Agreement. Along with each application, LICENSEE shall furnish LICENSOR detailed Construction Plans (as defined in **Paragraph IV.a**) and drawings for each individual Site, together with necessary maps, indicating specifically the Light Pole of LICENSOR to be used jointly by LICENSEE and LICENSOR, the number, size, and character of the attachments and Equipment to be placed by LICENSEE on such Light Pole, replacement of an existing Light Pole, if a replacement is required or requested by LICENSEE, any LICENSEE Pole(s) which LICENSEE seeks to install, and any new installations for transmission conduit, pull boxes, and appurtenances. For purposes of this Section, LICENSOR will deliver written notices (including application approval) electronically via the same system used by the LICENSEE to submit the application or construction plans electronically, or separately by email to the contact person listed on LICENSEE's submission.

d. LICENSEE may only submit one Site with each application. If approved, the Parties shall execute a Supplement for such individual Site. Upon execution of the Supplement, LICENSEE shall have the right to use the Site and its Contractors (as defined in **Paragraph IV.g**) may obtain building permits and proceed with the installation work in accordance with the terms of the Supplement and this Agreement.

e. In connection with LICENSEE's initial installation or subsequent modifications, LICENSEE shall replace Light Poles, where required, purchase Equipment, have electric and communications service lines installed, and otherwise perform all work at its own expense and in

such manner as to not interfere with LICENSOR's use of the Property or the Site. Except for emergencies, installations and equipment maintenance shall not be scheduled during parades, charitable run/walk events, sports leagues, concerts, recreation programs, or similar events scheduled in the applicable LICENSOR Property. Installation and maintenance shall also be scheduled so as to accommodate ongoing or newly completed work in or near the applicable LICENSOR Property, such as protection of newly planted turf or other vegetation in City Parks, newly installed asphalt or sidewalks in Right of Way, and other municipal work. In order to avoid such situations, LICENSEE shall provide notice of the planned work at least 48 hours in advance and coordinate with the LICENSOR to develop a mutually acceptable schedule for such work. For each existing Light Pole replaced by LICENSEE, the LICENSEE shall provide the LICENSOR's replacement Light Pole at LICENSEE's expense (consistent with **Paragraph II.n** below), as approved in the Supplement, along with its initial installation of Equipment and electric and communications services to the Light Pole. Provided LICENSOR confirms, upon inspection, that installation is complete and meets the requirements set forth in this Agreement and the applicable Supplement, LICENSOR will maintain ownership and responsibility for maintenance of the replacement Light Poles (but not LICENSEE's Equipment or electric and communications services).

f. Along with each application, the LICENSEE shall submit a non-refundable application fee in the amount of \$500 (which includes the then-current fee by City Ordinance for plan review by LICENSOR's Planning and Development Department for compliance with zoning requirements, and for any applicable review of the Site, proposed installation, or structure by the LICENSOR's Streetlight Program, Parks and Recreation Department, or Department or Division of the LICENSOR owning or controlling Other Areas). The application fee is in addition to any applicable fees for building permits (referred to by the LICENSOR as "zoning permits") issued by the LICENSOR's Planning and Development Department, as provided in Section 160.705 of the City Ordinance which are currently \$25 per Site, and the City's Engineering Division to install, maintain, or replace works in City Right of Way under City Ordinances 96.030, 96.085 and/or 96.235 *et. seq.* (all as established and then in effect pursuant to City Ordinance). In the event the Director of Parks and Recreation authorizes use of property in City Parks for LICENSEE Poles, the same application fee shall apply.

The \$500 application fee described above may be decreased or increased from time to time, based upon cost studies conducted by LICENSOR, solely at its cost, to determine a reasonable approximation of the objectively reasonable and non-discriminatory costs incurred by LICENSOR and specifically related to and caused by the application and plan review for deployment of equipment on LICENSOR's Light Poles. Such studies, and any adjustments pursuant thereto, shall be subject to the limitations of applicable Laws, including, without limitation, the following FCC ruling: *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WC Docket 17-84 and WT Docket 17-79, FCC 18-133 (rel. September 27, 2018) (hereinafter "*FCC 18-133*"), and rules promulgated in accordance with such Order. Copies of each such study shall be provided to LICENSEE for review so that LICENSEE may, without being obligated to do so, provide LICENSOR with comments regarding the costs detailed by the study and any proposed adjustment to LICENSOR's fees. Any ordinance changing the then-current application and plan review fees for deployment of equipment on LICENSOR's Light

Poles shall be applied on a competitively neutral and non-discriminatory basis, in accordance with applicable Laws, and adopted by City Ordinance. LICENSOR shall provide written notice to LICENSEE of any City Ordinance adjusting such fees. Arbitration may be conducted in the manner provided by **Paragraph VII.c.** to consider whether cost studies used by the LICENSOR's City Council to adjust application fees meet the standards established in this Agreement.

In the event FCC 18-133 and/or rules promulgated in accordance with such Order is/are reversed or vacated in whole or in part in a final decision issued by a court of competent jurisdiction, or otherwise amended or vacated by the FCC or federal law, the Parties shall negotiate, in good faith, and attempt to reach a mutually agreed amendment to this Agreement.

Any adjustments for application fees for Light Poles in Other Areas shall be made as adopted by City Ordinance or, in the absence thereof, by the mutual written agreement of the Parties.

g. After an application is approved and construction occurs, LICENSEE will be responsible for any inspection fees as required by LICENSOR's Ordinances.

h. LICENSEE may find it necessary to have LICENSEE Poles manufactured for LICENSEE's own use to provide a consistent aesthetic appearance in various historic areas within the City. As such, the LICENSEE hereby grants LICENSOR the non-exclusive right to use and reproduce (or cause manufacturers to reproduce) the design, in whole or in part, which is created by or on behalf of the LICENSEE and/or its affiliates for any such LICENSEE Poles. This grant is solely for LICENSOR's use and does not authorize LICENSOR to sell or sublicense the design of any LICENSEE Poles.

i. All Light Poles used by LICENSEE under this Agreement, designated as a LICENSOR-owned Light Pole in the applicable Supplement, including replacement Light Poles installed by LICENSEE, shall remain the property of LICENSOR; provided, however, installation has been completed, and the Site has been inspected, and found by the LICENSOR to meet the requirements of this Agreement and the applicable Supplement. Any payments made by the LICENSEE for installation or replacement of, or changes to, existing Light Poles and facilities, conduits, conductor pull boxes, facilities, or appurtenances which are the property of LICENSOR, shall not entitle LICENSEE to ownership of any of said infrastructure.

j. All Equipment and conduits, conductor pull boxes, cabinets, meter pedestal, facilities, or appurtenances shall be designed and installed within, adjacent to, or upon the Light Pole, only in accordance with the Construction Drawings as approved by LICENSOR, and designed and installed in compliance with LICENSOR's Ordinances, Uniform Manual, or other Code Standards. If any Equipment or facilities are placed adjacent to the Light Poles, such Equipment and facilities must comply with the design and other requirements as provided by City Ordinance, to the reasonable satisfaction of LICENSOR. To the extent technically feasible, design and installation of Light Poles must provide for secure access to both LICENSEE and LICENSOR equipment.

LICENSEE shall not authorize third parties to use LICENSOR's Light Poles in any

manner, and the LICENSOR reserves the sole right to authorize use of LICENSOR's Light Poles by any third parties; provided, however, such use shall not encroach on LICENSEE's Equipment or other portions of the Site licensed to LICENSEE, or otherwise interfere with LICENSEE's Approved Use in violation of this Agreement. Both Parties acknowledge that LICENSOR favors and encourages a policy of collocation to minimize the number of new Light Poles in the City.

k. LICENSEE shall not allow third parties to place signs, flags, advertising, or other similar items on the Light Poles or its Equipment on the Light Poles. LICENSEE's own signage shall be limited to signs, decals, tags, or labels as required by applicable Laws and shown in the final Construction Drawings approved by LICENSOR.

l. To the extent LICENSOR's existing Light Poles have a historic globe-type design, and the LICENSEE seeks to install replacement Light Poles for joint use by the LICENSEE and LICENSOR under this Agreement, LICENSEE will replace the historic globe-type Light Poles with a similar historic globe-type design of the same color and type, as approved by LICENSOR. Although historic globe-type designs are expected to be used in replacing globe-type Light Poles, LICENSOR may also waive this requirement in situations where the LICENSOR is not otherwise using globe-type designs in the general area of LICENSOR's Property involved. Such waiver, if any is granted, will be in writing and made by LICENSOR when approving the applicable Application. Notwithstanding the foregoing, any replacement Light Poles and LICENSEE Poles must conform to permitting or review requirements for design or placement of Light Poles which may be required by the LICENSOR with respect to any property listed on the National Register of Historic Places, South Dakota State Register of Historic Places, or Sioux Falls Register of Historic Landmarks, if any such permitting or review requirements apply.

m. For attachments on LICENSOR-owned Light Poles: LICENSEE will provide, at its own cost, Light Poles (the "*Spares Inventory*") for replacement of Light Poles by LICENSOR as required under this Agreement, as follows: at least 1 Light Pole for every increment of 1 to 10 Light Poles of each type and height utilized by LICENSEE, along with a replenishment of Light Poles for the Spares Inventory every December 1<sup>st</sup>, or as often as needed and agreed upon by the Parties.<sup>1</sup> The Light Poles for the Spares Inventory will be ordered by the LICENSEE from a mutually-agreed supplier for shipment to a storage place designated by the LICENSOR. The Light Poles for the Spares Inventory will be stored with the LICENSOR's streetlight maintenance contractor at the LICENSOR's cost (or, at LICENSOR's option, stored at LICENSOR's own municipally-owned outdoor street light storage area). LICENSOR will have the right to obtain spare Light Poles from this inventory only to replace Light Poles on which LICENSEE has attached Equipment, and LICENSEE will then remove and replace its Equipment as provided below.

n. The following shall govern which Party shall purchase and install a replacement Light Pole (or pole base) on which LICENSEE is proposing to install, or has installed, its Equipment: (i) if LICENSEE needs to replace an existing LICENSOR's Light Pole (and/or base)

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<sup>1</sup> By way of example only, for attachments 1 thru 10 on replacement Light Poles, and assuming only one type and height of Light Pole, 1 spare would be provided. If LICENSEE utilized 2 types and heights of Light Poles in its first 10 attachments, 1 spare for each type and height of Light Pole would be provided. The same would apply for attachments 11-20, 21-30, etc.



to accommodate LICENSEE's Equipment (for reasons including but not limited to structural integrity or height), then LICENSEE shall pay for the new Light Pole, materials, and labor for installation of the Light Pole; (ii) if a Light Pole (and/or base) has outlived its useful life and must be replaced, LICENSOR shall have a Light Pole from the Spares Inventory installed at its cost; provided, however, if a Light Pole from the Spares Inventory is not available, LICENSEE shall purchase the replacement Light Pole; (iii) if an existing Light Pole (and/or base) is damaged other than by LICENSEE or must be replaced on an emergency basis, LICENSOR shall have a Light Pole from the Spares Inventory installed at its cost; provided however, if a Light Pole from the Spares Inventory is not available, LICENSEE shall purchase the replacement Light Pole; and (iv) if an existing Light Pole (and/or base) is damaged by LICENSEE and must be replaced, LICENSOR shall have a Light Pole from the Spares Inventory installed, at LICENSEE's cost. If a Light Pole is damaged, needs replacement, and will not be used by LICENSEE for its facilities, then LICENSOR shall pay for and install the replacement Light Pole at its cost. Notwithstanding this Paragraph, each Party may independently seek to recover its respective costs from third parties causing damage to Light Poles or Equipment.

When a Light Pole with LICENSEE's Equipment needs to be replaced: (i) LICENSEE will be notified to remove its Equipment; (ii) LICENSOR shall reinstall its own lights and lighting equipment at its own cost, unless otherwise agreed by the Parties; and (iii) LICENSEE shall reinstall its own Equipment at its own cost. If the Parties agree that LICENSEE or its Contractor will reinstall LICENSOR's lights and equipment, such installation must be completed to the satisfaction of LICENSOR. Also, when LICENSEE installs a new Light Pole to replace an existing LICENSOR's Light Pole (a Light Pole with no LICENSEE Equipment previously attached), LICENSEE shall install LICENSOR's lights and lighting equipment at LICENSEE's cost or reimburse the LICENSOR for such installation as a Make-Ready Cost.

### **III. SITES**

a. Pursuant to all of the terms and conditions of this Agreement, and the applicable Supplement, LICENSOR agrees to license to LICENSEE each Site for the installation, operation, and maintenance of Equipment, together with the non-exclusive right of ingress and egress within the Properties seven (7) days a week, twenty-four (24) hours a day, to and from the Sites; provided; however, LICENSEE provides at least 48 hours' advance notice to LICENSOR to coordinate access. LICENSOR's consent to ingress and egress on any property is conditioned upon LICENSOR's ownership and control of such Property.

b. The primary use and purpose of the ROW Property is to provide for maintaining streets, street improvements, drainage, and street lighting, and the primary use and purpose of the City Parks Property is to conduct and provide space for public park, recreational, and community purposes, including but not limited to recreational activities and maintaining park aesthetics (each, a "*Primary Use*"). LICENSOR's operations take priority over LICENSEE's use as provided in an approved Supplement. In the event City Rights of Way are expanded or changed or the configuration of a City Park or its facilities are changed, such that the placement of Light Poles must be changed, then LICENSEE shall have the option to either (a) move or install the Light Pole with its equipment to a new, mutually agreed upon location on City Property (at the same rental rate), or (b) terminate the Supplement for said Site.

c. While performing any construction, installation, maintenance, or repair of its Equipment, LICENSEE shall employ protective measures and devices conforming with LICENSOR's Ordinances, the Uniform Manual of Traffic Control Devices for Streets and Highways issued by the U.S. Department of Transportation (the "*Uniform Manual*"), and any permits required in connection therewith.

d. LICENSEE agrees that the following priorities of use, in descending order, shall apply in the event of communications interference, emergency public safety needs, Site repair or reconditioning, or other conflict while this Agreement is in effect, and LICENSEE's Approved Use shall be subordinate accordingly:

- (1) LICENSOR, its employees, agents, and contractors;
- (2) Public safety agencies, including law enforcement, fire, and ambulance services, that are not related to LICENSOR;
- (3) Other governmental agencies where use is not related to public safety;
- (4) Pre-existing licensees (if any);
- (5) LICENSEE referenced in this Agreement.

e. In the event of any occurrence or event that poses an immediate threat of substantial harm or damage to the health, safety, and welfare of the public and/or the Property or Sites, as solely determined by LICENSOR (an "*Emergency Event*"), the LICENSOR may take actions the LICENSOR determines are required to address such Emergency Event; provided that promptly after such actions that affect the Sites, and in no event later than seventy-two (72) hours after such actions, LICENSOR gives written notice to LICENSEE of LICENSOR's emergency actions.

f. If LICENSOR determines that the conditions of the Emergency Event would be benefited by cessation of LICENSEE's operations, LICENSOR shall notify LICENSEE's Network Operations Center ("*NOC*") (at (800) 264-6620), and LICENSEE shall immediately cease its operations on the affected Sites, until LICENSOR notifies LICENSEE that the Emergency Event has been resolved and that LICENSEE can resume its Approved Use.

g. If LICENSEE intends to install (or have a third party install) underground electric, telephone, cable or fiber optic lines, or utility equipment, it shall request approval from the LICENSOR, by submitting to LICENSOR a detailed written plan for such installation, and the installation of any meter pedestals on, over, and/or under the Property and to the Sites as necessary for LICENSEE's Approved Use. LICENSOR shall, in its reasonable discretion, notify LICENSEE that it approves, denies, or modifies the plan within sixty (60) calendar days of receipt of the same, and in the case of any denial or modification, LICENSOR shall state the reasons therefor. Failure to respond within sixty (60) calendar days does not create a "deemed rejection" or "deemed acceptance" of the plan. LICENSEE will be required to arrange and pay for such installation.

h. LICENSEE must, at the time of application and at any future time as reasonably requested by LICENSOR, obtain and submit to LICENSOR a structural engineering study carried out by an independent structural engineer licensed in the State of South Dakota, showing that the Light Pole(s) is (are) able to support the Equipment as well as the street lighting

equipment used by the LICENSOR. Said study must be signed by an independent structural engineer licensed in the State of South Dakota. If the study finds that any proposed or existing Light Pole(s) is (are) inadequate to support the proposed loads, and the Light Pole(s) is (are) not required to be replaced by LICENSOR pursuant to **Paragraph II.n**, LICENSEE shall either replace the Light Pole(s), at its cost, or may withdraw the application or terminate the Supplement, as applicable.

i. LICENSEE's use of the Sites and the Property, and its design and installation of its Equipment and LICENSOR's Light Poles, to the extent installed by LICENSEE, must be in accordance with all applicable Laws including, but not limited to, the Americans with Disabilities Act; provided, however, a Supplement may include provision for LICENSEE to be reimbursed by LICENSOR to the extent any additional Work is required due to any existing improvements of LICENSOR which are not then in compliance with such Laws (e.g., the difference between the cost that would apply to install a replacement pole at a non-ADA compliant location and the cost of installing a replacement Light Pole at an ADA compliant location).

#### **IV. INSTALLATION OF EQUIPMENT**

##### **a. Construction Plans**

Prior to the approval of the Supplement and initial installation of all Light Poles, Equipment, and/or replacement Light Poles, and for any and all subsequent revisions and/or modifications thereof, or additions thereto, LICENSEE shall provide LICENSOR with construction plans ("*Construction Plans*") which shall be submitted to the LICENSOR through its Planning and Development Department electronic plan submittal process, and consisting of the following:

Line or CAD drawings (AutoCAD DWG format or ESRI Shapefile) showing the location and materials of all planned installations, plus an engineer's estimate of all materials and construction methods, with locations to be shown using UTM projection coordinates NAD83, Zone 14N, US-ET;

Construction Specifications and Product Specifications for all planned installations;

Diagrams and Shop Drawings of proposed Equipment and/or new replacement Light Poles;

Drawings showing elevations of the proposed equipment to be installed, and identification and distance to nearby features (and, when requested by LICENSOR, photo simulations); and

A complete and detailed inventory of all Equipment and personal property of LICENSEE to be actually placed on the Site.

LICENSOR retains the right to survey the installed Equipment and to reject construction that does not comport with the approved Construction Plans, Uniform Manual, or City Ordinances

Construction Plans shall be easily readable and subject to prior written approval by LICENSOR, which shall not be withheld, conditioned, or delayed without cause. LICENSOR shall have sixty (60) calendar days to review and comment on the Construction Plans and deficiencies and resubmittals shall be handled as provided in **Article II**, above. Failure to respond within sixty (60) calendar days does not create a "deemed rejection" or "deemed acceptance" of the Construction Plans. Should the Construction Plans need to be revised based on the comments provided by LICENSOR, no construction shall commence until final approval is granted by LICENSOR. Final Construction Plans shall have affixed to them the signature of LICENSEE's engineer who shall be licensed in the State of South Dakota. LICENSEE must obtain its building/construction permit on a timely basis as provided by City Ordinance or such plan approval will expire without notice. LICENSEE or its Contractor must timely commence construction and/or installation after obtaining the required permits for such construction and/or installation, and must timely call for and submit to inspection upon completion as provided by City Ordinance. LICENSEE must make payment of Make-Ready Costs related to work to be performed by LICENSOR, as applicable, and the installation must be inspected by LICENSOR before LICENSOR accepts ownership and maintenance responsibility for the subject Light Poles.

b. Construction Scheduling

In the event LICENSEE installs Equipment on LICENSOR's Light Poles prior to receiving authorization, LICENSEE shall be responsible for removal, if required by LICENSOR, and \$500 in liquidated damages for each calendar month the Equipment remains on LICENSOR's Light Poles without authorization, in addition to any penalties otherwise provided by law.

At least ten (10) Business Days prior to LICENSEE's construction mobilization, LICENSEE shall organize and conduct a meeting at the Site, during LICENSOR's business hours, or other location as agreed upon. Said meeting shall at a minimum be attended by a representative of LICENSOR and all parties involved in the installation.

c. Construction Inspection

All construction activity shall be subject to inspection and approval by LICENSOR. Inspection may be performed at any time during the course of the construction activity reasonably determined by LICENSOR, at LICENSEE's expense. Construction work performed without approval of LICENSOR will not be accepted and shall be removed or uninstalled at LICENSEE's sole expense. LICENSEE shall be solely responsible for all costs associated with said inspection and approval of such work by LICENSOR.

d. Exposed Equipment

All Equipment affixed to a Light Pole which has exterior exposure shall be as close to the color of the Light Pole as is commercially available to the LICENSEE, but shall not be contrasting or brightly colored. For exposed cables, wires, or appurtenances, LICENSOR reserves the right to require LICENSEE to provide cables, wires, or appurtenances in manufactured colors which are commercially available, in lieu of painting.

e. Damage by LICENSEE

Any damage to the Property, the Sites, or LICENSOR's equipment or structures thereon caused by LICENSEE in any manner shall be repaired or replaced at LICENSEE's expense and to LICENSOR's satisfaction. At its option, LICENSOR may repair or replace such items and bill LICENSEE for such repair or replacement.

f. As-Built Drawings

Within thirty (30) Business Days after LICENSEE activates the Equipment, LICENSEE shall provide LICENSOR with an As-Built drawing in electronic file format compatible with LICENSOR's record file system (as provided in **Paragraph IV.a**, above) consisting of As-Built drawings of the Equipment installed at the Site and on any of the Property, which shall show the actual location of all Equipment. Said drawings shall be accompanied by a complete and detailed site survey of the Property on which the Equipment is located and an inventory of all Equipment.

g. Permits

Prior to performing any work in or on any LICENSOR Property, LICENSEE, or its contractors and/or subcontractors (each, a "*Contractor*"), shall also obtain from LICENSOR's Engineering Department, or the appropriate governing agency as applicable, any and all permits of general applicability required for a complete installation of LICENSEE's Equipment, or any new or replacement Light Pole at the applicable location, including but not limited to any insurance and payment and performance bonds required for such permits. Said permits shall include, but not be limited to: Obstruction/Excavation, Meter Hooding, Storm Water, Zoning (as required for placement of communications facilities), and Right of Way Permits (for maintaining facilities in the LICENSOR's Right of Way). Applicable fees for any permits shall be borne by LICENSEE, and LICENSEE shall be bound by the requirements of said permits. LICENSEE shall require each of its Contractors to obtain and comply with all applicable permits.

h. Locating and Protecting Other Underground Facilities

LICENSEE or its Contractor shall notify the South Dakota One-Call Center (pursuant to SDCL § 49-7A-5) prior to any excavation or other construction that may affect Underground Facilities (as defined by SDCL § 49-7A-1). If the LICENSEE or its Contractor is unable to determine the location of an Underground Facility based on location markings made by the Underground Facility's Operator (as defined by SDCL § 49-7A-1) or discovers the Underground Facilities were incorrectly marked, the LICENSEE or its Contractor shall promptly notify the Underground Facility's Operator and, if unknown, the South Dakota One-Call Center (and, if necessary, request the area to be marked again). If, during construction, an Underground Facility is damaged, dislocated, or disturbed, the Contractor shall notify the Operator as required by SDCL § 49-7A-12. If the Operator is unknown, the Contractor shall contact South Dakota One-Call. In no event shall the Contractor conceal, or attempt to conceal, such damage, dislocation, or disturbance, or attempt to make repairs to the Underground Facility unless authorized by the Operator of such facility.

In areas where the excavation or construction of the LICENSEE or its Contractor will be

adjacent to Underground Facilities or to other underground or above ground personal property, structures, or fixtures, the Contractor shall make arrangements with the respective Operators or owners of such items, if known, to support, sustain, and protect existing Underground Facilities, personal property, structures, fixtures, pipes, conduits, poles, wires, and other apparatus located under, over, along, across, or adjacent to the work site. If Underground Facilities or any other underground or above ground personal property, structures, or fixtures are damaged through the negligence of the LICENSEE or its Contractor and are repaired by LICENSEE, its Contractor, or the public or private agencies or companies having control of same, the cost of such repairs shall be paid or reimbursed by the LICENSEE or its Contractor, as applicable, and not the LICENSOR.

South Dakota One-Call does not provide location services within City Park property. Accordingly, LICENSEE shall hire, at its expense, a utility locator or utility exploration company to locate underground facilities, and other underground items, including but not limited to irrigation equipment and public address wiring, if needed for the installation of Light Poles within City Parks, to the extent required by LICENSOR's Parks and Recreation Department in site specific approvals.

## **V. MAINTENANCE AND REPAIR OF EQUIPMENT**

### **a. Property**

LICENSOR reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Property and the Sites.

### **b. Structure Reconditioning and Repair**

(1) From time to time, LICENSOR paints, reconditions, or otherwise improves or repairs the Property, Light Poles, Sites, or structures or improvements thereon ("*Reconditioning Work*"). LICENSOR shall reasonably cooperate with LICENSEE to carry out Reconditioning Work in a manner that minimizes interference with LICENSEE's Approved Use, and LICENSEE shall reasonably cooperate with LICENSOR in a manner that minimizes interference with the Reconditioning Work.

(2) Except in cases of emergency, prior to commencing Reconditioning Work, LICENSOR shall provide LICENSEE with not less than sixty (60) calendar days' prior written notice thereof; provided, however, where sixty (60) days' prior notice is not practicable, LICENSOR shall provide as much prior notice as possible under the circumstances. Upon receiving such notice, it shall be the sole responsibility of LICENSEE to provide adequate measures to cover or otherwise protect the Equipment from the consequences of such activities including, but not limited to, paint and debris fallout. LICENSOR reserves the right to require LICENSEE to remove all Equipment during Reconditioning Work.

(3) During LICENSOR's Reconditioning Work, and after approval by LICENSOR in its sole discretion, LICENSEE may maintain, at its own expense, a temporary communications facility on the applicable Property, or on any land owned and

controlled by LICENSOR in the immediate area of the applicable Site, so long as such use does not violate an existing lease, easement, permit, or contractual obligation applying to such alternate property and such temporary facility does not interfere with construction or repairs on the applicable Property, impair traffic, impede sight lines, cause a nuisance, or violate generally applicable Ordinances or Code Standards of the LICENSOR then in effect. If the Property, or alternate property in the immediate area of the Site, will not accommodate the temporary communications facility, it shall be LICENSEE's responsibility to locate auxiliary sites and secure any permits or permissions for such other property, at its sole expense. LICENSOR shall notify LICENSEE when the Reconditioning Work has been completed, and LICENSEE shall reinstall its Equipment within thirty (30) calendar days. Also, LICENSEE shall remove any temporary equipment or facilities within ten (10) calendar days after the Reconditioning Work is completed (regardless of whether LICENSEE has reinstalled its Equipment or Facilities in its prior location), unless LICENSOR agrees in writing to an extension of the applicable time period.

(4) LICENSEE may request a modification of LICENSOR's procedures for carrying out Reconditioning Work in order to reduce the interference with LICENSEE's Approved Use. If LICENSOR agrees to the modification, LICENSEE shall be responsible for all incremental costs related to the modification.

(5) With regard to Light Poles that are no longer useable and/or need to be replaced, and to which LICENSEE's Equipment is attached ("*Replacement Work*"), the responsibility of the respective Parties for such replacement is provided in **Paragraph II.n**. Except for emergency situations, LICENSOR shall provide LICENSEE with at least sixty (60) calendar days' prior written notice of the required Replacement Work and the need for LICENSEE to remove its Equipment; provided, however, where sixty (60) days' prior notice is not practicable, LICENSOR shall provide as much prior notice as possible under the circumstances. During Replacement Work, LICENSEE may maintain a temporary communications facility on the Property, or on any land owned or controlled by LICENSOR in the immediate area of the Site, under the same conditions as for Reconditioning Work, above. LICENSEE shall reinstall its Equipment within thirty (30) calendar days. Also LICENSEE shall remove any temporary equipment or facilities within ten (10) calendar days after the Replacement Work is performed (regardless of whether LICENSEE has reinstalled its Equipment or Facilities in its prior location), unless LICENSOR agrees in writing to an extension of the applicable time period.

(6) If any Light Poles containing LICENSEE's Equipment need to be repaired due to storm or other damage requiring immediate work ("*Repair Work*"), LICENSOR shall notify LICENSEE to remove its Equipment as soon as possible. In the event of an emergency, LICENSOR shall contact LICENSEE by telephone at LICENSEE's NOC (at (800) 264-6620) prior to removing LICENSEE's Equipment. For any Light Poles previously replaced or installed by LICENSEE, but only to the extent LICENSOR does not have sufficient spare replacement Light Poles available for emergency use as provided in **Paragraph II.m**, LICENSEE will supply, at its own cost, the replacement Light Pole(s) to LICENSOR following the emergency, and installation of such Light

Poles will be at LICENSOR's expense. Once the Light Poles have been replaced or repaired, LICENSOR will promptly notify LICENSEE that it can reinstall its Equipment. During LICENSOR's Repair Work, and after approval by LICENSOR, LICENSEE may maintain a temporary communications facility on the Property, or on any land owned and controlled by LICENSOR in the immediate area of the Site, subject to the same terms as alternate sites for Reconditioning Work. LICENSEE shall reinstall its Equipment within thirty (30) calendar days. Also, LICENSEE shall remove any temporary equipment or facilities within ten (10) calendar days after the Repair Work is performed (regardless of whether LICENSEE has reinstalled its Equipment or Facilities in its prior location), unless LICENSOR agrees in writing to an extension of the applicable time period.

(7) If LICENSEE is unable to locate and operate a temporary communications facility during any LICENSOR Replacement Work, Reconditioning Work, or Repair Work for a period of more than 30 Business Days, the LICENSEE, at its sole option, shall have the right to terminate the applicable Supplement upon written notice to LICENSOR. However, if LICENSEE seeks approval of a new Supplement in a nearby location to replace the terminated Supplement, LICENSOR will employ good faith efforts to review and enter into a new Supplement on substantially equivalent terms and conditions as expeditiously as practicable.

c. LICENSEE Equipment

LICENSEE shall, at its own cost and expense, maintain the Equipment in good and safe condition, and in compliance with applicable fire, health, building, and life safety codes, and other applicable Laws. LICENSEE shall obtain from LICENSOR any and all permits required for the purposes of maintaining the Equipment, under the terms generally applicable for such permits. Applicable fees for any permits shall be borne by LICENSEE, and LICENSEE shall be bound by the requirements of said permits.

## **VI. CONDITION**

LICENSOR will keep and maintain the Light Poles in good repair as required for, and consistent with, the Primary Use of the applicable Property, and in the ordinary course of business as its budget permits. LICENSOR makes no guarantee as to the condition of any Site with regard to LICENSEE's Approved Use.

## **VII. TERM; RENTAL**

a. This Agreement shall be for a term of ten (10) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties (the "*Effective Date*"). The initial term of each Supplement shall be for ten (10) years and shall commence on the first day of the month following the date LICENSEE commences installation of the Equipment on the Site (the "*Commencement Date*"). On the Commencement Date of each Supplement, rental payments shall commence and be due in advance at a total annual rental of \$175.00 per LICENSOR Light Pole, to be paid to LICENSOR as set forth below. LICENSOR and LICENSEE shall acknowledge the Commencement Date of each Supplement in writing. LICENSOR and LICENSEE acknowledge and agree that the initial



rental payment for each Supplement may not actually be sent by LICENSEE until ninety (90) days after the written acknowledgement of the Commencement Date. ALL RENTAL PAYMENTS MUST PROMINENTLY IDENTIFY THE LICENSOR'S CONTRACT NUMBER FOR THIS AGREEMENT. In the event the Director of Parks and Recreation authorizes use of property in City Parks for LICENSEE Poles, the same rental rate shall apply.

b. The annual rental payable under this Agreement and each Supplement then in effect may be decreased or increased from time to time, based upon cost studies conducted by LICENSOR, solely at its cost, to determine a reasonable approximation of the objectively reasonable and non-discriminatory costs incurred by LICENSOR and specifically related to and caused by the deployment of Equipment on LICENSOR's Light Poles on Right of Way or City Parks. Such studies, and any adjustments pursuant thereto, shall be subject to the limitations of applicable Laws, including, without limitation, FCC 18-133 and rules promulgated in accordance with such Order. Copies of each such study shall be provided to LICENSEE for review so that LICENSEE may, without being obligated to do so, provide LICENSOR with comments regarding the costs detailed by the study and any proposed adjustment to annual rent and other fees. The cost study will be presented to the Sioux Falls City Council in a public meeting where LICENSEE will have an opportunity to comment. Any adjustment to the then-current annual rental shall be applied on a competitively neutral and non-discriminatory basis, in accordance with applicable Laws, and adopted by City Ordinance. LICENSOR shall provide at least ninety (90) days' prior written notice of any adjustment to the annual rental pursuant to City Ordinance to LICENSEE at the following address:

CommNet Cellular Inc.  
d/b/a Verizon Wireless  
Attn: NRE-Pole Attachment Invoices  
180 Washington Valley Road  
Bedminster, New Jersey 07921

In the event such notice is delivered less than ninety (90) calendar days before January 1 and LICENSEE's annual rental payment is not made at the adjusted amount, LICENSEE shall pay the difference within sixty (60) calendar days of LICENSEE's receipt of such notice, or shall be entitled to a credit against the next annual rental payment, as applicable. Absent such notice, LICENSEE shall pay the annual rental for the then-current year in the same amount as the annual rental payable for the immediately preceding year. In the event FCC 18-133 and/or rules promulgated in accordance with such Order is/are reversed or vacated in whole or in part in a final decision issued by a court of competent jurisdiction, or otherwise amended or vacated by the FCC or federal law, the Parties shall negotiate, in good faith, and attempt to reach a mutually-agreed amendment to this Agreement.

Any adjustments for rental rates for Light Poles in Other Areas shall be made as adopted by City Ordinance or, in the absence thereof, by the mutual written agreement of the Parties.

c. Disputes regarding whether cost studies used by LICENSOR's City Council to adjust application fees or annual rental rates meet the standards established in this Agreement shall be subject to binding arbitration as follows:

(1) Scope. Subject to **Paragraph VII.c(2)** below, arbitration shall be conducted to consider whether cost studies used by the LICENSOR's City Council to adjust annual rental rates meet the standards established in this Agreement in **Paragraph VII. b.** above (or in the case of arbitration related to application fees, **Paragraph II f.**). The arbitrator(s) shall consider only whether the City Council correctly applied the applicable standards in this Agreement and, unless the Parties mutually agree otherwise, may not be used to change the standards or conduct a *de novo* rate setting process, or establish final rates. No disputes arising under this Agreement except those relating to rental rates or application fees are subject to arbitration, unless mutually agreed by the Parties in writing. No arbitration demand may be lodged until such time as the LICENSOR's City Council issues its final determination.

(2) Condition Precedent. Unless the Parties agree otherwise, disputes must be submitted to mediation prior to conducting arbitration. Either Party may initiate mediation by providing written notice to the other. The mediation shall be conducted by a single neutral mediator appointed by the Parties. The Parties shall attempt in good faith to agree to a mediator who is competent by virtue of education and experience and who does not have any current or past substantial business or financial relationships with any Party to the mediation (except prior mediation). If the controversy or claim is not resolved by mediation within ninety (90) calendar days of such initial notice or such other period as the Parties may agree upon in writing, either Party may give notice in writing that the controversy or claim shall be decided by arbitration.

(3) Service of Arbitration Demand. Either Party may serve a demand for arbitration on the other. If LICENSEE makes such a demand on the LICENSOR, it must be served on the Sioux Falls Mayor and the Sioux Falls City Attorney.

(4) Arbitration Procedure. The arbitration shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within twenty (20) calendar days of the referral of the dispute to arbitration, each party shall choose one arbitrator who shall sit on a three-member arbitration panel, along with a third member who shall be chosen by the two selected arbitrators. The arbitrators shall be competent by virtue of education and experience in the subject of the arbitration and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). Once the third arbitrator is selected, the arbitration panel will select one of the arbitrators to be the chair of the arbitration panel. The arbitration shall be conducted using the South Dakota Rules of Civil Procedure and South Dakota Rules of Evidence. The arbitrator(s) shall have jurisdiction and authority to interpret, apply, or determine compliance with the standards established in this Agreement insofar as shall be necessary to the determination of issues properly before the arbitrators. In making the decision, the arbitrators shall issue appropriate written findings of fact and conclusions of law. The arbitrators shall not have jurisdiction or authority to add to, detract from, or alter the provisions of this Agreement or any applicable law or rule of civil procedure.

(5) Discovery. Discovery may be conducted as provided under the rules

governing civil actions in the circuit courts of the State of South Dakota. All discovery issues shall be determined by order of the arbitrators upon motion made to them by either Party. When a Party claims discoverable information is proprietary information or a trade secret, it shall bring the matter to the attention of the arbitrator(s), who shall make such protective orders as are reasonable and necessary or as are otherwise provided by law.

(6) Continuation of Performance. Pending the final decision of the arbitrators, the Parties will diligently proceed with the performance of all obligations, including the payment of all sums, required by this Agreement.

(7) Costs. Unless the arbitrator(s) determine a Party should be awarded fees, costs, or expenses as against the other for its defense against meritless or frivolous claims or responding to oppressive or unduly burdensome discovery requests, each Party shall pay one-half of each arbitrator's fees, costs, and expenses incurred in connection with the arbitration proceeding. Each Party, however, shall pay its own employee, expert consultant and attorney fees, as well as its costs of exhibits and other incidental costs.

(8) Enforcement. In the event the arbitrator(s) issue an order finding that the City Council failed to apply the applicable standards in this Agreement when establishing rental rates or application fees, the arbitrator(s) shall remand the matter to the LICENSOR's City Council to establish rates conforming to the applicable standards. In the event the City Council should fail to comply with such order, it may be enforced in court. Further, any orders as to the scope or appropriateness of a request for, or response to discovery of the arbitrator(s) may be enforced in court. Venue and jurisdiction of matters to be enforced in court shall be as provided in **Article XXVII** of this Agreement.

(9) Venue. All arbitration proceedings shall take place in the State of South Dakota, unless mutually agreed by the Parties. The arbitration shall be held at a location agreed upon by the Parties. In the event of failure to agree, the arbitrator(s) shall determine the most cost effective and convenient location.

(10) Compromise and Settlement. Unless the arbitration decision exceeds the authority conferred by this Agreement, the arbitration decision shall be deemed to be a settlement for all purposes in the future.

d. Unless and to the extent provided otherwise in the applicable Supplement, LICENSEE shall install or procure electrical and fiber optic lines and equipment at its own expense, and the use of such services will be metered or otherwise charged by third-party providers and paid by LICENSEE to such providers separately from any electric service or other services obtained and used by LICENSOR for LICENSOR's street lighting. However, if LICENSEE installs facilities on any Sites that are within LICENSOR's electric service territory, LICENSEE will establish a retail customer account with LICENSOR the same as its other customers, each Site will be separately metered, and LICENSEE will adhere to the terms of service and rates established by LICENSOR's Ordinances, with the charges to be billed by LICENSOR, and paid to LICENSOR monthly, along with finance charges for any past due amounts or payments as required under such Ordinances. In the event LICENSEE fails to timely pay charges billed by the LICENSOR for electricity and finance charges, the LICENSOR may

terminate electric service for the Site, consistent with the service conditions for any other commercial electric customer served by LICENSOR.

e. LICENSEE shall be permitted at any time during the Term of each Supplement to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at a Site), a temporary, portable power source to keep LICENSEE's communications facility operational, along with all related equipment and appurtenances within or on the Site, in such locations as reasonably approved by LICENSOR, so long as such temporary power source and related equipment and appurtenances do not interfere with snow removal, street maintenance resurfacing, repair, or rehabilitation, or construction or repairs on the applicable Property, impair traffic, impede sight lines, cause a nuisance, or violate generally applicable Ordinances or Code Standards of the LICENSOR then in effect. If the Property, or alternate property owned and operated by the LICENSOR in the immediate area of the Site, will not accommodate such portable power source, related equipment, and appurtenances, it shall be LICENSEE's responsibility to locate auxiliary sites and secure any permits or permissions for such other property, at its sole expense. LICENSOR will not be responsible for theft, vandalism, or damage to any such temporary equipment.

f. On all Supplements with a Commencement Date other than January 1<sup>st</sup>, the first year's rent shall be prorated to the end of the calendar year in which the Commencement Date occurs. Similarly, for all Supplements that expire or otherwise terminate on a date other than December 31<sup>st</sup>, the rent shall be prorated from the beginning of the year to the end of the month in which the Supplement expires or otherwise terminates. Subsequent to the initial payment of pro-rated rents in the year of the Commencement Date, the rent due hereunder for all subsequent years shall be paid in annual installments prior to January 1<sup>st</sup> of each succeeding year. If any annual rental payment due under this Agreement and the applicable Supplement is not received by LICENSOR within thirty (30) days of the date such payment is due, LICENSEE shall pay to LICENSOR, upon receipt of an invoice therefor, a late charge equal to 1.25% of the amount due for each month and/or fraction thereof during which the payment remains due and unpaid.

g. Upon request of the LICENSOR, LICENSEE shall pay rent by means of a bank draft (check) payable to the City of Sioux Falls, with the contract number for this Agreement (as assigned by the LICENSOR) clearly identified on the check. Upon mutual agreement, electronic funds transfer may be used rather than a check, and in such event LICENSOR agrees to provide the documentation and information required by LICENSEE for such purposes.

h. For any party to whom rental payments are to be made, LICENSOR or any successor-in-interest of LICENSOR hereby agrees to provide to LICENSEE: (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms, if required; and (iii) other documentation to verify LICENSOR's or such other party's right to receive rental payments as is reasonably requested by LICENSEE. Rent shall accrue in accordance with this Agreement, but LICENSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LICENSEE. Upon receipt of the requested documentation, LICENSEE shall deliver the accrued rental payments as directed by LICENSOR.

## VIII. EXTENSIONS

This Agreement and each Supplement shall automatically be extended for one (1) additional five (5) year extension term unless either LICENSOR or LICENSEE terminates the Agreement or Supplement, as applicable, at the end of the initial term by giving the other Party written notice of the intent to terminate at least three (3) months prior to the end of the then-current term. The initial term and extension under this Agreement or a Supplement shall be collectively referred to herein as the "*Term*." Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to each remaining Supplement then in effect until the expiration or termination of such Supplement.

## IX. USE; GOVERNMENTAL APPROVALS

LICENSEE shall use the Sites only for the Approved Use. It is understood and agreed that LICENSEE's license to use the Sites is contingent upon its obtaining and maintaining all of the certificates, permits and other approvals (collectively the "*Governmental Approvals*") that may be required by any federal, state or other governmental authorities, as well as a satisfactory structural analysis, and a radio frequency analysis as stated in the "*ENVIRONMENTAL*" provisions, below. LICENSOR shall not interfere with or object to LICENSEE's effort to obtain such approvals. LICENSOR shall not be responsible for any fees or costs associated with such approvals, and shall not be responsible for preparing or filing applications, conducting tests or surveys, or compliance with other specific license application requirements such as compliance, where required, with the National Environmental Policy Act, the National Historic Preservation Act, or any other requirements specific to governmental approvals. In the event that: (i) any application for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LICENSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated; or (iii) LICENSEE determines that such Governmental Approvals may not be obtained in a timely manner, LICENSEE shall have the right to terminate the applicable Supplement. Notice of LICENSEE's exercise of its right to terminate shall be given to LICENSOR in accordance with the "*NOTICE*" provisions, below, and shall be effective upon the later of: (a) the receipt of such notice; (b) upon such later date as designated by LICENSEE; or (c) upon LICENSEE's removal of the Equipment as required herein. All rentals paid prior to said termination date shall be retained by LICENSOR. Upon such termination, the applicable 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 thereunder, and LICENSEE's obligation to remove its Equipment, conduits, and all personal property from LICENSOR's Site and Property and restore the Site and Property as provided in **Article XVI**, below. Otherwise, the LICENSEE shall have no further obligations for the payment of rent to LICENSOR for the terminated Supplement.

## X. INDEMNIFICATION

a. LICENSEE shall indemnify and hold LICENSOR harmless from and against any claim of liability or loss from personal injury or property damage to the extent resulting from or arising out of any act or omission of LICENSEE, its employees, Contractors, or agents, in connection with this Agreement, including but not limited to LICENSEE's installation of any

Light Pole on a Property or LICENSEE's use of such Property, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of LICENSOR, its employees, contractors, or agents. LICENSOR will provide LICENSEE with prompt, written notice of any written claim covered by this indemnification; provided that any failure of LICENSOR to provide any such notice, or to provide it promptly, shall not relieve LICENSEE from its indemnification obligations 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 LICENSOR and without an unconditional release of all claims by each claimant or plaintiff in favor of LICENSOR. Nothing in this Agreement shall be construed as a waiver of LICENSOR's sovereign or any other immunity or defense available to LICENSOR, or its appointed or elected officials, officers, and employees.

b. LICENSEE shall also indemnify and hold LICENSOR harmless from and against any fines, fees, and/or penalties, whether regulatory, administrative, criminal, or civil, arising from LICENSEE's failure to comply with, or violation of, applicable Laws, except to the extent such noncompliance or violation was due to or caused by the negligence or willful misconduct of LICENSOR, its employees, contractors, or agents.

## **XI. INSURANCE**

a. LICENSEE shall obtain and maintain, at all times during the Term of this Agreement the following types of insurance in the following amounts: (i) Commercial General Liability insurance with a limit of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises-operations, contractual liability, personal injury and products completed operations; and (ii) Commercial Automobile Liability insurance covering all owned, non-owned and hired vehicles with a combined single limit of \$5,000,000 each accident for bodily injury and property damage. The Commercial General Liability insurance policy shall include the LICENSOR, its elected and appointed officials, officers, and employees as additional insureds as their interests may appear under this Agreement for any covered liability arising out of LICENSEE's performance or non-performance of Work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer, LICENSEE shall use commercially reasonable efforts to provide the LICENSOR with thirty (30) Business Days' prior written notice of cancellation. LICENSEE shall be responsible for notifying the LICENSOR of such cancellation. Coverage under this provision shall be reviewed annually by LICENSOR and additional types of coverage or limits may be required, upon written notice to LICENSEE, consistent with the LICENSOR's requirements for similarly situated licensees or leases of LICENSOR. LICENSEE shall also maintain a \$5,000,000 umbrella policy.

b. Within forty five (45) days after both Parties have signed this Agreement, and prior to each anniversary date thereafter, LICENSEE shall deliver to LICENSOR the required

certificate(s) of insurance and a copy of the blanket additional insured endorsement, which shall state the following:

(1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; policy expiration date; and specific coverage amounts; and

(2) that LICENSEE's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the LICENSOR may possess, including any self-insured retentions the LICENSOR may have; and any other insurance the LICENSOR does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

The certificate(s) of insurance and notices shall be mailed annually on January 1 to the LICENSOR at the address specified in **Article XIX** below.

c. LICENSEE shall obtain and maintain at all times during the Term of this Agreement statutory workers' compensation and employer's liability insurance in an amount required by South Dakota law, and employer's liability insurance in an amount of \$1,000,000 each accident/disease/policy limit, and shall furnish the LICENSOR with an annual certificate of insurance showing proof of such coverage.

d. Any insurance provider of LICENSEE shall be admitted and authorized to do business in the State of South Dakota and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a Financial Size Category of "VII."

e. "*Severability of interest*" or "*separation of insureds*" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

## **XII. LIMITATION OF LIABILITY**

Neither Party shall be liable to the other Party, or any of its respective agents, representatives, or employees, for any lost revenue, lost profits, loss of technology, 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.

## **XIII. ONE-CALL RESPONSIBILITY**

LICENSEE shall become a member of South Dakota One-Call if required by SDCL Ch. 49-7A. When provided with notification by the South Dakota One-Call Center, established to comply with South Dakota Codified Law (SDCL) 49-7A and Administrative Rule Article 20:25, LICENSEE will provide location markings showing the location of LICENSEE's Underground Facilities attached and adjacent to Light Poles under this Agreement. LICENSOR shall have no responsibility to provide location markings for LICENSEE's underground facilities, direct the manner in which such markings are to be made, or to notify or remind LICENSEE to provide location markings. LICENSEE shall defend, hold harmless, and indemnify the LICENSOR for

any claims, damages, penalties, and fees levied or charged to LICENSOR which arise from LICENSEE's failure to provide one-call markings or failure to provide adequate markings.

#### **XIV. ANNUAL TERMINATION**

Notwithstanding anything to the contrary contained herein, provided LICENSEE is not in default hereunder beyond applicable notice and cure periods, LICENSEE shall have the right to terminate each Supplement upon the annual anniversary of the Commencement Date of such Supplement provided that three (3) months' prior written notice is given to LICENSOR. Upon such termination, the applicable 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 thereunder, and LICENSEE's obligation to remove its Equipment, conduits, and all personal property from LICENSOR's Site and Property and restore the Site and Property as provided in **Article XVI**, below. At any time following the sixth (6<sup>th</sup>) anniversary of the Commencement Date of any Supplement, LICENSOR shall have the right to terminate such Supplement upon the annual anniversary of the Commencement Date of such Supplement, provided that three (3) months' prior written notice is given to LICENSEE of such termination. Upon such termination, the applicable 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 thereunder, and LICENSEE's obligation to remove its Equipment, conduits, and all personal property from LICENSOR's Site and Property and restore the Site and Property as provided in **Article XVI**, below.

#### **XV. INTERFERENCE**

a. LICENSEE, in the performance and exercise of its rights and obligations under this Agreement and any Supplement, agrees to install Equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then-existing industry standards, or otherwise interfere in any manner with the equipment of any higher priority users (as set forth in **Paragraph III.d**) including, but not limited to, the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities, cable television, location monitoring services, public safety and other then-existing telecommunications equipment, utility, or any municipal property, without the express written approval of the LICENSOR or other higher priority users, or except as otherwise permitted with regard to LICENSOR's Properties pursuant to this Agreement. In the event any LICENSEE Equipment causes such interference, and after LICENSOR has notified LICENSEE of such interference by a written communication and a call to LICENSEE's NOC (at (800) 264-6620), LICENSEE will take all commercially reasonable steps necessary to correct and eliminate the interference including, but not limited to, at LICENSEE's option, powering down the interfering equipment and later powering up the interfering equipment for intermittent testing. The LICENSEE agrees to cooperate with subsequent users of the Premises to resolve issues affecting interference with signals.

b. The LICENSOR agrees that after the LICENSEE has attached Equipment to a specific Site, other tenants, licensees, or Light Pole users who currently have or in the future take



possession of space at the Site, with the exception of any higher priority users, will not be permitted to install new or additional equipment that is of the type and frequency which would cause harmful interference which is measurable in accordance with then-existing industry standards to the then-existing Equipment of LICENSEE or otherwise interfere with the existence and operation of equipment of higher priority users. More specifically, the LICENSOR will attempt to require each subsequent user to provide the LICENSOR with either of the following: (a) a radio frequency interference study carried out by an independent professional radio frequency engineer ("*Independent RF Engineer*") approved by the LICENSOR showing that such subsequent user's proposed use will not interfere with any existing, licensed communications facilities, LICENSOR's licensed and unlicensed communications facilities, or other higher priority users, if any; or (b) a certificate of compliance from a professional radio frequency engineer employed by or chosen by the subsequent user verifying that the installation by the subsequent user, along with LICENSEE's Equipment, will result in signals that are in compliance with then-existing RF emission requirements of the FCC and that such user's equipment will not cause interference with LICENSOR's, LICENSEE's or any other third party's existing use of the Light Pole on the Site or Property.

c. LICENSOR's obligations with respect to interference by third parties is limited to requiring compliance with the above criteria. The LICENSOR does not warrant that LICENSEE will be free from interference caused by third parties. However, in the event the LICENSEE claims interference by a subsequent user or a prior user claims interference by LICENSEE, the LICENSOR may attempt to facilitate discussions between the parties. Otherwise, LICENSEE and other users must hire their own professional radio frequency engineers or engage in dispute resolution against the other (including court action, as necessary).

d. Where agreed by LICENSEE and any other user(s), determinations as to the occurrence of harmful interference may be made by an Independent RF Engineer (as defined in **Paragraph XV.b**), which agreement would also address the party responsible for the costs of the Independent RF Engineer's analysis. If additional dispute resolution is necessary, LICENSOR shall encourage the affected parties to resolve the dispute as quickly and efficiently as possible, at no cost to the LICENSOR.

e. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Article, and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

## **XVI. REMOVAL AT END OF TERM**

LICENSEE shall, upon expiration of the Term of a Supplement, or within ninety (90) days after any earlier termination, remove its Equipment, conduits, fixtures, and all personal property and restore the Site to its original condition, reasonable wear and tear and damage by fire or other casualty or third parties excepted. LICENSOR agrees and acknowledges that all of the Equipment, conduits, fixtures, and personal property of LICENSEE shall remain the personal property of LICENSEE, and LICENSEE shall have the right to remove the same at any time during the Term. All Light Poles, conduit, and pole boxes of LICENSOR are and shall remain property of LICENSOR. If at such time for removal LICENSEE fails to remove its Equipment,

LICENSEE shall pay rent at 150% of the then-existing monthly rate, or the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures, and all personal property are completed. However, if LICENSEE's Equipment, conduits, fixtures, and all personal property are not removed within six (6) months of expiration of the Term of a Supplement, or any earlier termination, and are not thereafter removed within sixty (60) calendar days of LICENSOR's written notice to LICENSEE that such items have not yet been removed, such items shall automatically become property of LICENSOR, and LICENSOR shall dispose of items as it desires without any compensation to LICENSEE.

#### **XVII. NO REPRESENTATION OR WARRANTY - CONDITIONAL GRANT**

LICENSOR makes no representation or warranty regarding the condition of its title to the Property or its right to grant to LICENSEE use or occupation thereof under this Agreement. The license granted herein is "AS IS, WHERE IS." LICENSEE is entering into this Agreement, and LICENSEE's use of the Property is subject to LICENSEE's own investigation and acceptance. LICENSEE's rights granted pursuant to this Agreement are subject and subordinate to all limitations, restrictions, and encumbrances relating to LICENSOR's interest in the Property that may affect or limit LICENSOR's right to grant those rights to LICENSEE. This Agreement is not an Easement and does not create or grant any rights to LICENSEE except as stated herein.

#### **XVIII. ASSIGNMENT**

This Agreement and each Supplement under it may be sold, assigned, or transferred by the LICENSEE without any approval or consent of the LICENSOR to the LICENSEE's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of LICENSEE's assets in the market defined by the FCC in which the Sites are located by reason of a merger, acquisition or other business reorganization. LICENSEE shall provide written notice of any such sales, assignments, or transfers within sixty (60) calendar days thereof. As to other circumstances, this Agreement and each Supplement may not be sold, assigned, or transferred without the prior written consent of LICENSOR, not to be unreasonably withheld, conditioned, or delayed. No change of stock ownership, partnership interest or control of LICENSEE shall constitute an assignment hereunder. In the event of any sale, assignment, or transfer, LICENSEE shall not be relieved of any of its obligations under this Agreement or any of the Supplements whose term has not expired or otherwise terminated at the time of such sale, assignment, or transfer, except to the extent otherwise provided in writing by the Parties.

#### **XIX. NOTICES**

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LICENSOR: City of Sioux Falls  
Attention: Light Superintendent  
2000 North Minnesota Avenue  
Sioux Falls, South Dakota 57104

With a copy to:

City of Sioux Falls  
Attention: City Attorney  
P.O. Box 7402  
224 W. Ninth Street  
Sioux Falls, SD 57117-7402

LICENSEE: CommNet Cellular Inc.  
d/b/a Verizon Wireless  
Attention: Network Real Estate  
180 Washington Valley Road  
Bedminster, New Jersey 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing. Notwithstanding the above, any demand for arbitration or any summons and complaint served on the LICENSOR must be served on the LICENSOR's Mayor and City Attorney as provided by law.

## **XX. RECORDING AND PUBLIC RECORDS**

Upon request by LICENSEE, LICENSOR agrees to execute a Memorandum of Supplement which LICENSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Supplement is for recording purposes only and bears no reference to commencement of either the Term or rent payments. This Agreement and all Supplements thereto are subject to disclosure as public records under South Dakota law. To the extent permissible under South Dakota laws, LICENSEE may identify information, such as trade secrets, propriety financial records, customer information, or technical information, submitted to the LICENSOR as confidential. LICENSEE shall prominently mark any information for which it claims confidentially with the word "Confidential" on each page of such information prior to submitting such information to the LICENSOR. The LICENSOR shall treat any information so marked as confidential until the LICENSOR receives any request for disclosure of such information. With five (5) Business Days of receiving any such request, the LICENSOR shall provide LICENSEE with written notice of the request, including a copy of the request, at Verizon Wireless – West Territory, Attention: Real Estate Manager, 10801 Bush Lake Road, Bloomington, Minnesota 55438. LICENSEE shall have five (5) Business Days within which to provide a written response to the LICENSOR, before the LICENSOR will disclose any of the requested confidential information. In the event the LICENSOR provides its notice to the LICENSEE more than five days after receipt of a public information request, LICENSOR will extend the period for responding to the public information request, such that the LICENSEE will

have five (5) days to respond. The LICENSOR retains the final discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

## **XXI. DEFAULT**

In the event there is a breach by a Party with respect to any of the provisions of this Agreement or a Supplement, or its obligations hereunder or thereunder, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) Business Days in which to cure any breach; provided the breaching Party shall have such extended period as may be required beyond the thirty (30) Business Days if the breaching Party commences the cure within the thirty (30) Business Day period and thereafter continuously and diligently pursues the cure to completion. A Party's failure to cure a breach within the time period set forth herein shall constitute a "*Default*."

## **XXII. REMEDIES**

a. In the event of a Default by either Party, 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 and/or the applicable Supplement and/or may pursue any remedy now or hereafter available to the non-defaulting Party under applicable laws or under the judicial decisions of the State of South Dakota. 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 on the defaulting Party's behalf including, but not limited to, the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party within forty five (45) days of invoice therefor.

b. Termination or interpretation of this Agreement is a contract matter and does not constitute a matter for which an administrative contested case hearing is required under SDCL Ch. 1-26 or City Ordinance 30.040

## **XXIII. ENVIRONMENTAL**

a. Unless and to the extent waived by LICENSOR in writing, prior to installing any Light Poles or Equipment on any Site or Property, LICENSEE must obtain, at LICENSEE's cost, a radio frequency interference study carried out by an Independent RF Engineer for that Site showing that LICENSEE's use will not interfere with any existing, licensed communications facilities, or LICENSOR's licensed and unlicensed communications facilities, or other higher priority users, if any; provided, however, in lieu of obtaining the services of an Independent RF Engineer, the LICENSEE may provide a certificate of compliance from a professional radio frequency engineer employed by or chosen by the LICENSEE verifying that the installation will be in compliance with then-existing RF emission requirements of the FCC and that LICENSEE's equipment will not cause interference with LICENSOR's or any other third party's use of the Light Pole or the Site or Property. When an Independent RF Engineer is utilized, such engineer shall be approved by the LICENSOR and shall provide its evaluation to LICENSOR and LICENSEE no later than thirty (30) Business Days after LICENSOR provides its frequencies to LICENSEE. LICENSEE or the Independent RF Engineer will independently obtain information

on frequencies of third parties. LICENSEE shall not transmit or receive signals at the Property until such evaluation has been satisfactorily completed and demonstrates that such interference will not occur.

b. LICENSEE shall conduct a radio frequency compliance evaluation at a Site following LICENSEE's initial RF transmissions on the Site. LICENSEE shall be responsible for all costs of the evaluation. LICENSEE shall confirm the results of the evaluation in writing to LICENSOR upon its completion. LICENSOR is not required to conduct radio frequency compliance evaluations with respect to LICENSEE's Equipment.

c. LICENSEE shall implement all measures at the transmission site required by FCC regulations including, but not limited to, posting signs and markings. LICENSOR shall cooperate with and permit LICENSEE to implement all measures required in order for LICENSEE to fulfill its FCC obligations. LICENSEE agrees that in the event any future party causes the entire Site to exceed FCC radio frequency limits, as measured on the Site, LICENSEE shall not hold LICENSOR liable for such interference or for the cost of any actions required by LICENSEE, if any, under applicable laws to mitigate or reduce the cumulative radio frequency exposure at the Site.

d. LICENSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("*EH&S Laws*"). LICENSEE shall indemnify and hold harmless LICENSOR from claims to the extent resulting from LICENSEE's violation of any applicable EH&S Laws, and shall also indemnify and hold harmless LICENSOR to the extent that LICENSEE causes a release of any regulated substance into the environment. LICENSOR shall indemnify and hold harmless LICENSEE, to the extent permitted by law, from claims to the extent resulting from LICENSOR's violation of any applicable EH&S Laws, and shall also indemnify and hold harmless LICENSEE, to the extent permitted by law, to the extent LICENSOR causes a release of any regulated substance into the environment. The Parties recognize neither Party shall be responsible to the other Party for any environmental condition or issue except to the extent resulting from that Party's specific activities and responsibilities. In the event that LICENSEE encounters any hazardous substances that do not result from its activities, it shall immediately provide written notice to LICENSOR of such condition, and may relocate its facilities to avoid such hazardous substances to a mutually-agreeable location.

#### **XXIV. CASUALTY**

In the event of damage by fire or other casualty to any Site that cannot reasonably be expected to be repaired within forty-five (45) days following the same or which LICENSOR elects not to repair, or if the Site is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LICENSEE's operations at the Site for more than forty-five (45) days, then LICENSEE may, at any time following such fire or other casualty, provided LICENSOR has not completed the restoration required to permit LICENSEE to resume its operation at the Site, terminate the Supplement upon fifteen (15) days' prior written notice to LICENSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the

expiration date of the Supplement. The rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LICENSEE's Approved Use of the Site is impaired.

## **XXV. APPLICABLE LAWS**

"Laws" means any and all laws, rules, regulations, ordinances, resolutions, judicial decisions, rules, permits, and approvals applicable to LICENSEE's use, including EH&S Laws, that are in force on the date of this Agreement or as lawfully amended or enacted including, without limitation, LICENSOR's City Charter and Code of Ordinances. LICENSEE shall comply with all Laws with respect to LICENSEE's use. This Agreement shall in no way limit or waive either Party's present or future rights under Laws. If, after the date of this Agreement, the rights or obligations of either Party are materially preempted or superseded by changes in Laws, the Parties agree to engage in good faith negotiations to amend the Agreement and/or any applicable Supplement to reflect the change in Laws.

## **XXVI. FORCE MAJEURE**

Notwithstanding any other provision of this Agreement, neither LICENSOR nor LICENSEE shall be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement, or any Supplement, due to an event or events reasonably beyond the ability of LICENSEE or LICENSOR to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, earthquakes, fire, floods, explosions, epidemics, tornadoes and work delays caused by waiting for utility providers to service or monitor or provide access to either (i) LICENSOR's Light Poles to which LICENSEE's Equipment is attached or to be attached, or (ii) conduits in which LICENSEE's facilities are located or to be located.

## **XXVII. MISCELLANEOUS**

This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises, and understandings between the LICENSOR and the LICENSEE regarding this transaction, and no oral agreement, promises, or understandings shall be binding upon either the LICENSOR or the LICENSEE in any dispute, controversy, or proceeding. This Agreement may not be amended or varied except in a writing signed by both Parties. This Agreement shall extend to and bind the permitted successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights hereunder, shall not waive such rights, and such Party shall have the right to enforce such rights at any time. The performance of this Agreement and each Supplement shall be governed, interpreted, construed, and regulated by the laws of the state in which the Site is located without reference to its choice of law rules. Except as provided in **Paragraph VII.c**, venue and jurisdiction for disputes arising under this Agreement shall be in the Second Circuit Court of Minnehaha County, South Dakota or the United States District Court for the District of South Dakota, as applicable.

**XXVIII. CONDEMNATION**

If the whole or any part of any Property shall be taken by any public authority under the power of eminent domain, or is sold to any entity having the power of eminent domain under threat of condemnation, then the term of this Agreement or the applicable Supplements shall cease as of the date of the granting of the petition or the date of the closing. All rentals payable or paid to said termination date shall be paid to, or retained by, LICENSOR, as applicable. Any award, compensation, or damages shall be paid to and be the sole property of LICENSOR, but nothing herein shall preclude LICENSEE from claiming against the condemning authority with respect to moving expenses and loss of personal property, and, if applicable, receiving an award therefor.

**XXIX. APPROPRIATIONS**

This Agreement extends beyond the current municipal fiscal year. LICENSOR will use reasonable efforts to obtain and maintain funds sufficient to cover the LICENSOR's services or obligations under the Agreement and any Supplement(s), including making provision for such services or obligations to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of LICENSOR. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds is solely within the discretion of the then-current governing body of LICENSOR. If funds are not budgeted or appropriated in any future fiscal year for services or obligations of the LICENSOR under this Agreement during said fiscal year, this Agreement imposes no obligation on the LICENSOR with regard to such services or obligations for that fiscal year; provided, however, LICENSOR shall be obligated for services or obligations budgeted or appropriated during any prior or future fiscal year. LICENSOR shall not be in Default under this Agreement to the extent of any services or obligations for which funds have not been budgeted or appropriated, and no right of action or damages shall accrue to the benefit of LICENSEE as a result thereof. However, in such event and with LICENSOR's approval, not to be unreasonably withheld, conditioned, or delayed, LICENSEE may perform, at its cost, installation, replacement, maintenance, or repair services or obligations which LICENSOR is unable to perform with regard to LICENSOR's Light Poles to which LICENSEE's Equipment is then attached.

**XXX. NONDISCRIMINATION**

LICENSEE shall comply with the provisions of Chapter 98 of the Code of Ordinances of the City of Sioux Falls, prohibiting discrimination because of race, color, sex, creed, religion, ancestry, national origin, or disability. This Section shall be binding on all of LICENSEE's subcontractors or suppliers.

*[Remainder of this Page Intentionally Blank-Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

LICENSOR:

**City of Sioux Falls, South Dakota**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

LICENSEE:

**CommNet Cellular Inc. d/b/a Verizon Wireless**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A

### LICENSE SUPPLEMENT

1. This License Supplement ("*Supplement*"), is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the City of Sioux Falls, South Dakota, with its principal offices located at 224 West 9<sup>th</sup> Street, Sioux Falls, South Dakota 57104 ("*LICENSOR*"), and CommNet Cellular Inc. d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("*LICENSEE*").

2. Master License Agreement. This Supplement is a Supplement as referenced in that certain Master License Agreement between LICENSOR and LICENSEE, dated the \_\_\_ day of \_\_\_\_\_, 2018, LICENSEE Contract No. \_\_\_\_\_ (the "*Agreement*"). All of the terms and conditions of the Agreement are incorporated herein 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 Supplement, the terms of the Agreement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

3. Site. LICENSOR hereby leases to LICENSEE certain spaces on and within LICENSOR's Property located at <INSERT SITE ADDRESS>, including, without limitation, approximately (\_\_\_\_) square feet of Equipment space on the Light Pole. The Equipment and cabling space are as shown on **Exhibit 1**, attached hereto and made a part hereof. **[ALTERNATE LANGUAGE TO INCLUDE FOR USE OF REPLACEMENT LIGHT POLE: LICENSOR shall deliver the Site to LICENSEE in a condition ready for LICENSEE's construction of its improvements and clean and free of debris. Notwithstanding the foregoing, LICENSOR makes no representations or warranties to LICENSEE with regard to the condition or structural capacity of LICENSOR's Light Pole. LICENSEE acknowledges and agrees that LICENSOR delivers the Site and Light Pole for LICENSEE's use in its current "AS IS, WHERE IS" condition.]**

Check here to confirm that the Light Pole is owned by the LICENSOR.

4. Term. The Commencement Date and the Term of this Supplement shall be as set forth in **Article VII** of the Agreement.

5. Consideration. Annual rent for this Supplement shall be \$175.00 payable in annual installments, and subject to adjustment by LICENSOR, as set forth in **Article VII** of the Agreement. ALL RENTAL PAYMENTS MUST PROMINENTLY IDENTIFY THE LICENSOR's CONTRACT NUMBER, \_\_\_\_\_, FOR THE AGREEMENT.

6. Utilities. **[INCLUDE ALTERNATE LANGUAGE AS NEEDED]**

7. Site Specific Terms. (Include any Site-specific terms)

a. **[ALTERNATE LANGUAGE TO INCLUDE FOR REPLACEMENT LIGHT POLES: Light Pole Replacement by LICENSEE. LICENSEE agrees to construct,**

at its cost, LICENSOR's Light Pole on the Site according to the location, size, and specifications contained within the final Construction Plans as approved in writing by LICENSOR. LICENSOR shall deliver the Site to LICENSEE in a condition ready for LICENSEE's construction of its improvements and clean and free of debris. LICENSEE acknowledges and agrees that LICENSOR delivers the Site for LICENSEE's use in its current "AS IS, WHERE IS" condition. LICENSEE agrees that the Light Pole will be constructed in a good and workmanlike manner in accordance with the approved plans and specifications unless otherwise approved in writing by LICENSOR, which approval shall not be unreasonably withheld, conditioned, or delayed.]

*[Remainder of Page Intentionally Blank- Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

LICENSOR:

**City of Sioux Falls, South Dakota**

By: **[EXHIBIT ONLY - NOT FOR EXECUTION]**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE:

**CommNet Cellular Inc. d/b/a Verizon Wireless**

By: **[EXHIBIT ONLY - NOT FOR EXECUTION]**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT 1**

## Site Plan

(Include Map, Light Pole Diagram, Site Plan, Survey and Table for each Light Pole Location)