

1 **BY AUTHORITY**

2 RESOLUTION NO. CR16-0616
3 SERIES OF 2016

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a permit to Verizon Wireless (VAW) LLC d/b/a Verizon Wireless to**
6 **encroach into certain public rights-of-way.**

7
8 **RECITALS**

9 (a) Verizon Wireless (VAW) LLC d/b/a Verizon Wireless (“Verizon Wireless”) wishes to
10 place, construct, and modify personal wireless services facilities, and small cell networks comprised
11 of small cell wireless services facilities, at locations within the public rights-of-way of the City and
12 County of Denver (collectively or singularly “Facilities”) in order to provide personal wireless services
13 (“wireless service”) to the public in accordance with licenses issued to Verizon Wireless by the
14 Federal Communications Commission (“FCC”).

15 (b) The permitting, construction, modification, maintenance, and operation of these
16 facilities are of Federal (47 U.S.C. § 332 and FCC orders), statewide (§ 29-27-401, et seq., C.R.S.),
17 and local concern.

18 (c) Pursuant to § 29-27-404, C.R.S., Verizon Wireless wishes to file a consolidated
19 application to place and construct numerous Facilities within the City and County of Denver, and
20 which shall allow for the future placement, construction, and modification of Facilities to be decided
21 administratively under supplemental sub-permits (the “Sub-Permits”).

22 **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
23 **OF DENVER:**

24 **Section 1. Grant of Permit**

25 (a) The City and County of Denver (“City”) hereby grants to Verizon Wireless (VAW) LLC
26 d/b/a Verizon Wireless and its successors and assigns (“Permittee”), a permit (the “Permit”) to
27 encroach into the City’s rights-of-way with the placement of Facilities described more fully below in
28 areas set forth below; and also to be set forth in sub-permits (each a “Sub-Permit”) in the future (in
29 a form to be agreed to between the Parties at the time of filing of applications for additional
30 Sub-Permits), also as more fully described below. The City and Permittee are sometimes herein
31 referred to individually as “Party” or collectively as the “Parties.”

32 (b) The City hereby grants a permit to Permittee with no expiration and which will remain
33 in full force and effect until revoked in accordance with Section 6 below. The permit is for Permittee’s

1 use of certain space within the City’s rights-of-way, at locations more fully described below and in
2 future Sub-Permits (each an “Encroachment Area”). The permit includes the right of the installation
3 and operation of Permittee’s approved poles, communications equipment, including all necessary
4 nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes,
5 and any associated equipment Permittee deems necessary to operate the personal wireless
6 services facilities and uses incidental thereto, or other third party equipment in small cell networks
7 and/or by individual small cell facilities (in its entirety, a “Facility,” with multiple together referred to
8 as “Facilities”), within the Encroachment Areas defined herein, and in any applicable Sub-Permit.

9 i. **ENCROACHMENT AREAS:**

10 **Location: 1920 Wewatta**

- 11 • Latitude: N 39° 45’ 21.41” (NAD ’83)
- 12 • Longitude: W 104° 59’ 53.95” (NAD ’83)

13 **Location: 1902 California**

- 14 • Latitude: N 39° 44’ 52.91’ (NAD ’83)
- 15 • Longitude: W 104° 59’ 18.07’ (NAD ’83)

16 ii. **FACILITIES:**

17 The pole and facilities located at **1920 Wewatta St.** will include a pole of 26-feet, 4-inches
18 and the antenna on top of the pole at, 3 feet, 9 inches with a total height of 30’ 1”. The other item
19 associated with the pole and antenna are: a foundation of 5’x5’, 160 feet of electrical line with
20 conduit, an underground fiber vault with fiber optic cable, and an integrated meter with disconnect.

21
22 The pole located at **1902 California St.** will include a pole of 26-feet, 4-inches and the
23 antenna on top of the pole at 3 feet, 9 inches with a total height of 30’ 1”. The other item associated
24 with the pole and antenna are: a foundation of 5’x5’, 550 feet of electrical line with conduit, an
25 underground fiber vault with fiber optic cable, and an integrated meter with disconnect.

26 (c) City agrees and acknowledges that Permittee may apply to the City to place additional
27 Facilities in Encroachment Areas within the City. Permittee may apply for a Sub-Permit (under this
28 Permit) from the Manager of Public Works (see also, Section 5(h), below). When approved and
29 issued, all terms of this Permit shall be by this reference incorporated into each Sub-Permit.

30

1 **Section 2. Permittee Requirements**

2 (a) The Permit granted by this Resolution is expressly granted upon and subject to each
3 and all of the following terms and conditions:

4 i. Permittee shall obtain a street occupancy permit from Public Works Permit
5 Operations at 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

6 ii. Permittee shall be responsible for obtaining all other permits and shall pay all
7 costs that are necessary for installation and construction of items permitted herein.

8 iii. If the Permittee intends to install any underground facilities in or near a public
9 road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
10 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
11 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
12 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate
13 underground facilities prior to commencing any work under this Permit.

14 iv. Permittee is fully responsible for any and all damages incurred to facilities of the
15 Water Department and/or drainage facilities for water and sewage of the City and County of Denver
16 due to Permittee's activities authorized by the Permit. Should the relocation or replacement of any
17 drainage facilities for water and sewage of the City and County of Denver become necessary as
18 determined by the Manager of Public Works, in the Manager's sole and absolute discretion,
19 Permittee shall pay all cost and expense of the portion of the sewer affected by and on account of
20 the Facilities. The extent of the affected portion to be replaced or relocated by Permittee shall be
21 determined by the Manager of Public Works. Any and all replacement or repair of facilities of the
22 Water Department and/or drainage facilities for water and sewage of the City and County of Denver
23 attributed to the Permittee shall be made by the Water Department and/or the City and County of
24 Denver at the sole expense of the Permittee. In the event any of Permittee's Facilities are damaged
25 or destroyed due to the Water Department's or the City and County of Denver's repair, replacement
26 and/or operation of its facilities, repairs will be made by the Permittee at its sole expense, except
27 that neither this Permit nor any Sub-Permits shall be deemed to limit any remedies at law or in equity
28 available to Permittee to recover from those other than Permittee who may have caused damages
29 to Permittee Facilities. Permittee agrees to defend, indemnify and save the City harmless and to
30 repair or pay for the repair of any and all damages to said sanitary sewer caused by the Facilities,
31 or those damages resulting from the failure of the sewer to properly function as a result of the
32 Facilities.

1 v. Permittee shall comply with all requirements of affected utility companies and
2 pay for all costs of removal, relocation, replacement or rearrangement of utility company facilities to
3 the extent the Permittee Facilities caused the need to remove, relocate, replace or rearrange the
4 utility company facilities. Existing telephone facilities shall not be obstructed or disturbed.

5 vi. All construction in, under, on or over each Encroachment Area shall be
6 accomplished in accordance with the Building Code of the City and County of Denver. Plans and
7 Specifications governing the construction of the Facilities shall be approved by the Manager of Public
8 Works and the Director of Building Inspection Division prior to construction. Upon completion, a
9 reproducible copy of the exact location and dimensions of the Facilities shall be filed with the
10 Manager of Public Works.

11 vii. The sidewalk and street/alley over the Encroachment Areas shall be capable of
12 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The Facilities
13 within the Encroachment Areas shall be constructed so that the paved section of the street/alley can
14 be widened without requiring additional structural modifications. The sidewalk shall be constructed
15 so that it can be removed and replaced without affecting structures within the Encroachment Areas.

16 viii. Permittee shall pay all costs of construction and maintenance of its Facilities in
17 each Encroachment Area. Upon revocation, termination, or abandonment, Permittee shall pay all
18 costs of removing the Facilities from any Encroachment Area and return the Encroachment Area to
19 its original condition under the supervision of the City Engineer.

20 ix. Permittee shall remove and replace any and all street/alley paving, sidewalks,
21 and curbs and gutters inside the Encroachment Areas and in the rights-of-way adjacent thereto that
22 become broken, damaged or unsightly during the course of construction of the Facilities which are
23 caused by Permittee or are related in any way to Permittee's Facilities or the construction thereof.
24 In the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, and
25 curbs and gutters that become broken or damaged when, in the opinion of the City Engineer, the
26 damage has been caused by the activity of the Permittee within the Encroachment Area. All repair
27 work done on account of Permittee activities shall be accomplished without cost to the City and
28 under the supervision of the City Engineer.

29 x. The City reserves the right to make an inspection of the Encroachments
30 contained within the Encroachment Area. An annual fee, subject to reasonable change pursuant to
31 the "Tier II Encroachment Permit" guidelines upon ninety (90) days' notice to Permittee, of \$200.00
32 shall be assessed to Permittee for each Encroachment Area ("Permit Fees"). This Permit Fee shall
33 be paid on or before the anniversary date of the grant of the Permit (or such Sub-Permit, as the case

1 may be) for an Encroachment Area. Except those set forth herein, no other fees shall be required
2 of or paid by Permittee.

3 xi. This permit shall not operate or be construed to abridge, limit or restrict the City
4 and County of Denver in exercising its right to make full use of the Encroachment Area and adjacent
5 rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in exercising
6 their rights to construct, remove, operate and maintain their facilities within the Encroachment Area
7 and adjacent rights-of-way. Notwithstanding, Permittee shall be given reasonable notice as is
8 practicable (by a call to Permittee's Network Operations Center at (800) 224-6620/(800) 621-2622)
9 if any such activity will interfere with its Facilities. During such time, the City or utility companies
10 involved with any activity that may interfere with Permittee's Facilities shall work cooperatively with
11 Permittee to reduce interference with its Facilities, or to make arrangements or modifications to
12 promote the uninterrupted use of Permittee's Facilities.

13 xii. Permittee shall comply with the provisions of Article IV (Prohibition of
14 Discrimination in Employment, Housing and Commercial Space, Public Accommodations,
15 Educational Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the
16 Revised Municipal Code of the City and County of Denver. The failure to comply with any such
17 provision shall be a proper basis for revocation of this Permit.

18 xiii. During the existence of the Encroachments and this permit, Permittee, its
19 successors and assigns, at its expense, and without cost to the City and County of Denver, shall
20 procure and maintain a single limit commercial general liability insurance policy with a limit of
21 \$500,000.00 for bodily injury and property damage and \$500,000 general aggregate. All coverages
22 are to be arranged on an occurrence basis and include coverage for those hazards normally
23 identified as X.C.U. during construction. The insurance coverage required herein constitutes a
24 minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability
25 of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage
26 required herein shall be written in a form and by a company or companies reasonably approved by
27 the Risk Manager of the City and County of Denver and authorized to do business in the State of
28 Colorado. A certificate of insurance shall be filed with the Manager of Public Works. Upon receipt
29 of notice from its insurers, Permittee will use its best efforts to provide the City with thirty (30) days
30 prior written notice of cancellation and each such policy shall contain a statement therein or
31 endorsement thereon that it will not be canceled or materially changed without written notice, by
32 certified mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of
33 the cancellation or material change. All such insurance policies shall be specifically endorsed to

1 include all liability assumed by the Permittee hereunder and shall name the City and County of
2 Denver as an additional insured as its interest may appear under this Permit.

3 xiv. Permittee shall agree to indemnify and always save the City and County of
4 Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the
5 rights and privileges granted by this permit. The City agrees that Permittee will not indemnify or hold
6 the City harmless for costs, claims, or damages due or caused by the negligence or willful
7 misconduct of the City or its employees, contractors, or agents.

8 **Section 3. Casualty**

9 In the event of damage by fire or other casualty to any Encroachment Areas that cannot
10 reasonably be expected to be repaired within forty-five (45) calendar days following same or, if any
11 Encroachment Areas are damaged by fire or other casualty so that such damage may reasonably
12 be expected to disrupt Permittee’s operations at the Encroachment Areas for more than forty-five
13 (45) calendar days, then Permittee may terminate either the applicable Sub-Permit or only the
14 affected Facilities upon at least fifteen (15) calendar days written notice to the City prior to the end
15 of such forty-five (45) day period. Any such notice of termination shall cause such Sub-Permit or the
16 affected Facilities, as applicable, to expire with the same force and effect as though the date set forth
17 in such notice was the date originally set as the expiration date of the applicable Sub-Permit and the
18 Parties shall make an appropriate adjustment, as of such termination date, with respect to payments
19 due to the other under the Sub-Permit. Notwithstanding the foregoing, all Permit Fees with respect
20 to each affected Encroachment Area shall abate during the period of such fire or other casualty.

21 **Section 4. Relocation and Displacement of Facilities.**

22 Permittee understands and acknowledges that the City may require Permittee to relocate one
23 or more of its Facilities. Permittee shall, at the City’s direction, and upon reasonable notice as
24 practicable, relocate such Facilities at Permittee’s sole cost and expense whenever City reasonably
25 determines in its sole discretion that the relocation is needed for any of the following purposes: (a)
26 if required for the construction, modification, completion, repair, relocation, or maintenance of a City
27 or other public agency project; (b) because the Facility is interfering with or adversely affecting proper
28 operation of City-owned poles, light posts, traffic signals, communications, or other municipal
29 facilities (collectively, the “Municipal Equipment”); or (c) to protect or preserve the public health or
30 safety. In any such case, the City shall use reasonable efforts to afford Permittee a reasonably
31 equivalent alternate location. If Permittee shall fail to relocate any Facilities as requested by the City
32 in accordance with the foregoing provision, the City shall be entitled to remove or relocate the Facility
33 at Permittee’s sole cost and expense, without further notice to Permittee. Permittee shall pay to the

1 City actual costs and expenses incurred by the City in performing any removal work and any storage
2 of Permittee's property after removal within thirty (30) days of the date of a written demand for this
3 payment from the City. To the extent the City has actual knowledge thereof, the City will attempt
4 promptly to inform Permittee of the displacement or removal of any Municipal Equipment on which
5 any Facility is located. If the Municipal Equipment is damaged or downed for any reason, and as a
6 result is not able to safely hold the Facility, the City will have no obligation to repair or replace such
7 Municipal Equipment for the use of Permittee's Facility.

8 **Section 5. Permittee Stipulations**

9 (a) The City agrees that this Permit and all Sub-Permits hereunder have no expiration and
10 will remain in full force and effect until terminated in accordance with the terms and conditions of
11 Section 6.

12 (b) Permittee shall use the Facilities in the Encroachment Areas as set forth in the
13 applicable Permit and/or Sub-Permit for the purpose of operating communications facilities and uses
14 incidental thereto. The City grants to Permittee the right to install, maintain, replace, and modify its
15 Facilities and any frequencies or technology upon which the Facilities operate as needed to meet
16 Permittee's business objectives; subject, however, to any limitations or conditions set forth in this
17 Permit or any Sub-Permit.

18 i. In the event that there are not sufficient utility resources or other similar services
19 Permittee deems necessary for the operation of Permittee's Facilities at any Encroachment Area,
20 the Permittee, its fiber transport provider, or the local utility provider, may apply to the City for a
21 permit for the right to install such utilities on, over, under and/or to the Encroachment Area as
22 necessary for Permittee to operate its Facilities, all in conformance with the City Building Code.
23 Permittee must follow City regulations in order to place or cause to place such utilities, and receive
24 permission from the City in advance of doing so.

25 (c) Permittee, its employees and/or contractors shall have access, ingress, and egress
26 on, in, over, under, through, and about each Encroachment Area twenty-four (24) hours a day, seven
27 (7) days a week for the purpose of installation, maintenance, and modification of the Facilities;
28 provided such right of access shall be subject to any limitations, restrictions, and/or requirements
29 described in Section 1 or any Sub-Permit.

30 (d) Permittee may have access to electrical power in the Encroachment Areas, but at
31 Permittee's sole expense and subject to the requirements set forth in Section 1 and any Sub-Permit.

32 (e) The Permittee's Facilities are personal property of the Permittee, and the Permittee
33 will at all times own and control the Facilities. The Encroachment Areas are the property of the City,

1 and Permittee shall have no obligation with respect to the repair or replacement of any
2 Encroachment Areas, so long as such is not made necessary due to Permittee’s construction and
3 use of the Facilities, and as otherwise set forth in Section 1 and any Sub-Permit.

4 (f) This Permit or any Sub-Permit shall not be assigned by Permittee without the express
5 written consent of the City, which consent shall not be unreasonably withheld, conditioned, or
6 delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Permittee to
7 Permittee’s parent, affiliates, or an entity which acquires all or substantially all of Permittee’s assets
8 in the market defined by the Federal Communications Commission in which the Encroachment Area
9 is located by reason of a merger, acquisition or other business reorganization shall not require the
10 consent of the City.

11 (g) Permittee is entitled to survey the Encroachment Area upon which each of the Facilities
12 are placed at its own expense, said survey shall be attached to the applicable Sub-Permit and shall
13 control in the event of boundary and access discrepancies.

14 (h) Permittee may submit for review applications for Sub-Permits, to be reviewed,
15 processed and approved in accordance with the “Tier II Encroachment Permit” process (as required
16 by the City’s Public Works Department) set forth in the Rules and Regulations of the Executive
17 Director of the Department of Public Works – Encroachments in the Public Right of Way, for review
18 and approval by the Manager of Public Works (each an “Application”).

19 **Section 6. Termination.**

20 (a) The Permit hereby granted shall be revocable if the Council of the City and County of
21 Denver shall determine, and in conformance with due process and with Federal, state, and local law,
22 that the public health, safety or general welfare require such revocation, and not for an arbitrary,
23 unreasonable or discriminatory reason; provided, however, that no revocation shall take place until
24 180 days’ notice is given to Permittee prior to Council action upon such revocation or proposed
25 revocation, and an opportunity shall be afforded to Permittee, its successors and assigns, to be
26 present at a public hearing before the City Council, and thereat to present its views and opinions
27 thereof and to present for consideration action or actions alternative to the revocation of such Permit.

28 (b) Permittee may terminate all or any portion of the Facilities under this Permit or any
29 applicable Sub-Permit, at Permittee’s sole discretion, upon 180 calendar days prior written notice to
30 the City. In the event that Permittee exercises its right of early termination under this Section 6,
31 Permittee shall pay all undisputed Permit Fees then due under the applicable Sub-Permit with
32 respect to the terminated Facilities, together with any other fees or charges then due and owing to

1 the City under the applicable Sub-Permit, and in compliance with any other required provisions
2 herein.

3 **Section 7. Administrative/Procedural Matters**

4 (a) Notices and Contacts. All notices hereunder must be in writing and shall be sent
5 certified mail, return receipt requested, or by commercial overnight carrier, to the City at: Public
6 Works Engineering, Regulatory & Analytics (ERA), 201 W. Colfax Avenue, Dept. 507, Denver, CO
7 80202 (with a copy via email to Denver.PWERA@denvergov.org, and to Permittee at: 180
8 Washington Valley Road, Attention: Network Real Estate, Bedminster, NJ 07921. Notice by certified
9 mail or by commercial overnight carrier shall be effective upon actual receipt or refusal as shown on
10 the receipt obtained pursuant to the foregoing.

11 (b) Interpretive Matters. Unless otherwise expressly provided, for purposes of this Permit
12 and any Sub-Permits hereunder the following rules of interpretation shall apply: (a) any reference
13 to gender shall include all genders, and words imparting the singular number only shall include the
14 plural and vice versa; (b) the words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer
15 to this Permit and the Sub-Permit, as applicable, as a whole and not merely to a subdivision in which
16 such words appear unless the context otherwise requires; and (c) the word “including” or any
17 variation thereof means “including, without limitation” and shall not be construed to limit any general
18 statement that it follows to the specific or similar items or matters immediately following it.

19 (c) Public Records. Permittee acknowledges that information submitted to the City may
20 be open to public inspection and copying under state law. Permittee may identify information, such
21 as trade secrets, proprietary financial records, customer information or technical information,
22 submitted to the City as confidential. Permittee shall prominently mark any information for which it
23 claims confidentiality with the word “Confidential” on each page of such information prior to
24 submitting such information to the City. Within five (5) working days of receiving a request for
25 disclosure of any information so marked as confidential, the City shall provide Permittee with written
26 notice of the request in accordance with Section 7(a) above, each including a copy of the request.
27 Permittee shall have thirty (30) working days within which to provide a written response to the City,
28 before the City will disclose any of the requested confidential information. The City retains the final
29 discretion to determine whether to release the requested confidential information, in accordance with
30 applicable laws. Permittee is also entitled to take all action under the law to prevent disclosure of its
31 confidential, trade secret, and proprietary information.

32

1 COMMITTEE APPROVAL DATE: August 25, 2016 by Consent

2 MAYOR-COUNCIL DATE: August 30, 2016

3 PASSED BY THE COUNCIL: September 12, 2016

4  - PRESIDENT

5
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 PREPARED BY: Mitch Behr, Assistant City Attorney DATE: September 1, 2016

10 Pursuant to Section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of
11 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
12 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
13 3.2.6 of the Charter.

14 Denver City Attorney

15

16 BY: , Assistant City Attorney DATE: Sep 1, 2016