

1 **BY AUTHORITY**

2 RESOLUTION NO. CR16-0617
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 **BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

9 **RECITALS**

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

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

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

23 **AGREEMENT**

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
34 use of certain space within the City’s rights-of-way, at locations more fully described below and in
35 future Sub-Permits (each an “Encroachment Area”). The permit includes the right of the installation

1 and operation of Permittee’s approved poles, communications equipment, including all necessary
2 nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes,
3 and any associated equipment Permittee deems necessary to operate the personal wireless
4 services facilities and uses incidental thereto, or other third party equipment in small cell networks
5 and/or by individual small cell facilities (in its entirety, a “Facility,” with multiple together referred to
6 as “Facilities”), within the Encroachment Areas defined herein, and in any applicable Sub-Permit.

7 i. **ENCROACHMENT AREAS:**

8 **Location: 2105 19th St**

- 9 • Latitude: N 39° 45’ 29.24” (NAD ’83)
- 10 • Longitude: W 105° 00’ 05.80” (NAD ’83)
- 11 • Ground Elevation = 5182.7’ (NAVD ’88)
- 12 • Consists of a 49 sq ft disturbance. The center of said disturbance is positioned 6 ft northeast
13 of the northeast curb line of 19th St, and 20 ft southeast of the prolongation of the northwest
14 curb line of Basset St.

15
16 **Location: 2080 18th St**

- 17 • Latitude: N 39° 45’ 24.25” (NAD ’83)
- 18 • Longitude: W 105° 00’ 08.68’ (NAD ’83)
- 19 • Ground Elevation = 5182.9’ (NAVD ’88)
- 20 • Consists of a 49 sq ft disturbance. The center of the said disturbance is positioned 16.5 ft
21 northeast of the prolongation of the southwest curb line of 18th St, and 176 ft southeast of
22 the southeast curb line of Basset St.

23
24 **Location: 1450 Delgany St**

- 25 • Latitude: Latitude: N 39° 45’ 06.81” (NAD ’83)
- 26 • Longitude: W 105° 00’ 15.26” (NAD ’83)
- 27 • Ground Elevation = 5187.8’ (NAVD ’88)
- 28 • Consists of a 49 sq ft disturbance. The center of the said disturbance is positioned 7 ft
29 southeast of the southeast curb line of Delgany St, and 152 Ft southwest of the southwest
30 curb line of 15th St.

31
32 ii. **FACILITIES:**

33 The small cell pole and equipment at **2105 19th St** include: one (1) 26’ 4” pole, one (1) 3’ 9”
34 antenna, for a total height of 30’ 1”, one (1) foundation, 190’ of conduit with electrical facilities, one
35 (1) underground fiber vault with fiber, and an integrated meter with disconnect.

36 The small cell pole and equipment at **2080 18th St** include: one (1) 26’ 4” pole, one (1) 3’ 9”
37 antenna, for a total height of 30’ 1”, one (1) foundation, 85’ of conduit with electrical facilities, one (1)
38 underground fiber vault with fiber, and an integrated meter with disconnect.

1 The small cell pole and equipment at **1450 Delgany St** include: one (1) 26' 4" pole, one (1) 3' 9"
2 antenna, for a total height of 30' 1", one (1) foundation, 100' of conduit with electrical facilities , one
3 (1) underground fiber vault with fiber, and an integrated meter with disconnect.

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

8 **Section 2. Permittee Requirements**

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

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

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

15 iii. If the Permittee intends to install any underground facilities in or near a public
16 road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
17 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
18 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-
19 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate
20 underground facilities prior to commencing any work under this Permit.

21 iv. Permittee is fully responsible for any and all damages incurred to facilities of the
22 Water Department and/or drainage facilities for water and sewage of the City and County of Denver
23 due to Permittee's activities authorized by the Permit. Should the relocation or replacement of any
24 drainage facilities for water and sewage of the City and County of Denver become necessary as
25 determined by the Manager of Public Works, in the Manager's sole and absolute discretion,
26 Permittee shall pay all cost and expense of the portion of the sewer affected by and on account of
27 the Facilities. The extent of the affected portion to be replaced or relocated by Permittee shall be
28 determined by the Manager of Public Works. Any and all replacement or repair of facilities of the
29 Water Department and/or drainage facilities for water and sewage of the City and County of Denver
30 attributed to the Permittee shall be made by the Water Department and/or the City and County of
31 Denver at the sole expense of the Permittee. In the event any of Permittee's Facilities are damaged
32 or destroyed due to the Water Department's or the City and County of Denver's repair, replacement
33 and/or operation of its facilities, repairs will be made by the Permittee at its sole expense, except

1 that neither this Permit nor any Sub-Permits shall be deemed to limit any remedies at law or in equity
2 available to Permittee to recover from those other than Permittee who may have caused damages
3 to Permittee Facilities. Permittee agrees to defend, indemnify and save the City harmless and to
4 repair or pay for the repair of any and all damages to said sanitary sewer caused by the Facilities,
5 or those damages resulting from the failure of the sewer to properly function as a result of the
6 Facilities.

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

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

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

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

26 ix. Permittee shall remove and replace any and all street/alley paving, sidewalks,
27 and curbs and gutters inside the Encroachment Areas and in the rights-of-way adjacent thereto that
28 become broken, damaged or unsightly during the course of construction of the Facilities which are
29 caused by Permittee or are related in any way to Permittee's Facilities or the construction thereof.
30 In the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, and
31 curbs and gutters that become broken or damaged when, in the opinion of the City Engineer, the
32 damage has been caused by the activity of the Permittee within the Encroachment Area. All repair

1 work done on account of Permittee activities shall be accomplished without cost to the City and
2 under the supervision of the City Engineer.

3 x. The City reserves the right to make an inspection of the Encroachments
4 contained within the Encroachment Area. An annual fee, subject to reasonable change pursuant to
5 the “Tier II Encroachment Permit” guidelines upon ninety (90) days’ notice to Permittee, of \$200.00
6 shall be assessed to Permittee for each Encroachment Area (“Permit Fees”). This Permit Fee shall
7 be paid on or before the anniversary date of the grant of the Permit (or such Sub-Permit, as the case
8 may be) for an Encroachment Area. Except those set forth herein, no other fees shall be required
9 of or paid by Permittee.

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

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

25 xiii. During the existence of the Encroachments and this permit, Permittee, its
26 successors and assigns, at its expense, and without cost to the City and County of Denver, shall
27 procure and maintain a single limit commercial general liability insurance policy with a limit of
28 \$500,000.00 for bodily injury and property damage and \$500,000 general aggregate. All coverages
29 are to be arranged on an occurrence basis and include coverage for those hazards normally
30 identified as X.C.U. during construction. The insurance coverage required herein constitutes a
31 minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability
32 of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage
33 required herein shall be written in a form and by a company or companies reasonably approved by

1 the Risk Manager of the City and County of Denver and authorized to do business in the State of
2 Colorado. A certificate of insurance shall be filed with the Manager of Public Works. Upon receipt
3 of notice from its insurers, Permittee will use its best efforts to provide the City with thirty (30) days
4 prior written notice of cancellation and each such policy shall contain a statement therein or
5 endorsement thereon that it will not be canceled or materially changed without written notice, by
6 certified mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of
7 the cancellation or material change. All such insurance policies shall be specifically endorsed to
8 include all liability assumed by the Permittee hereunder and shall name the City and County of
9 Denver as an additional insured as its interest may appear under this Permit.

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

15 **Section 3. Casualty**

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

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

29 Permittee understands and acknowledges that the City may require Permittee to relocate one
30 or more of its Facilities. Permittee shall, at the City's direction, and upon reasonable notice as
31 practicable, relocate such Facilities at Permittee's sole cost and expense whenever City reasonably
32 determines in its sole discretion that the relocation is needed for any of the following purposes: (a)
33 if required for the construction, modification, completion, repair, relocation, or maintenance of a City

1 or other public agency project; (b) because the Facility is interfering with or adversely affecting proper
2 operation of City-owned poles, light posts, traffic signals, communications, or other municipal
3 facilities (collectively, the “Municipal Equipment”); or (c) to protect or preserve the public health or
4 safety. In any such case, the City shall use reasonable efforts to afford Permittee a reasonably
5 equivalent alternate location. If Permittee shall fail to relocate any Facilities as requested by the City
6 in accordance with the foregoing provision, the City shall be entitled to remove or relocate the Facility
7 at Permittee’s sole cost and expense, without further notice to Permittee. Permittee shall pay to the
8 City actual costs and expenses incurred by the City in performing any removal work and any storage
9 of Permittee’s property after removal within thirty (30) days of the date of a written demand for this
10 payment from the City. To the extent the City has actual knowledge thereof, the City will attempt
11 promptly to inform Permittee of the displacement or removal of any Municipal Equipment on which
12 any Facility is located. If the Municipal Equipment is damaged or downed for any reason, and as a
13 result is not able to safely hold the Facility, the City will have no obligation to repair or replace such
14 Municipal Equipment for the use of Permittee’s Facility.

15 **Section 5. Permittee Stipulations**

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

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

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

32 (c) Permittee, its employees and/or contractors shall have access, ingress, and egress
33 on, in, over, under, through, and about each Encroachment Area twenty-four (24) hours a day, seven

1 (7) days a week for the purpose of installation, maintenance, and modification of the Facilities;
2 provided such right of access shall be subject to any limitations, restrictions, and/or requirements
3 described in Section 1 or any Sub-Permit.

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

6 (e) The Permittee's Facilities are personal property of the Permittee, and the Permittee
7 will at all times own and control the Facilities. The Encroachment Areas are the property of the City,
8 and Permittee shall have no obligation with respect to the repair or replacement of any
9 Encroachment Areas, so long as such is not made necessary due to Permittee's construction and
10 use of the Facilities, and as otherwise set forth in Section 1 and any Sub-Permit.

11 (f) This Permit or any Sub-Permit shall not be assigned by Permittee without the express
12 written consent of the City, which consent shall not be unreasonably withheld, conditioned, or
13 delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Permittee to
14 Permittee's parent, affiliates, or an entity which acquires all or substantially all of Permittee's assets
15 in the market defined by the Federal Communications Commission in which the Encroachment Area
16 is located by reason of a merger, acquisition or other business reorganization shall not require the
17 consent of the City.

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

21 (h) Permittee may submit for review applications for Sub-Permits, to be reviewed,
22 processed and approved in accordance with the "Tier II Encroachment Permit" process (as required
23 by the City's Public Works Department) set forth in the Rules and Regulations of the Executive
24 Director of the Department of Public Works – Encroachments in the Public Right of Way, for review
25 and approval by the Manager of Public Works (each an "Application").

26 **Section 6. Termination.**

27 (a) The Permit hereby granted shall be revocable if the Council of the City and County of
28 Denver shall determine, and in conformance with due process and with Federal, state, and local law,
29 that the public health, safety or general welfare require such revocation, and not for an arbitrary,
30 unreasonable or discriminatory reason; provided, however, that no revocation shall take place until
31 180 days' notice is given to Permittee prior to Council action upon such revocation or proposed
32 revocation, and an opportunity shall be afforded to Permittee, its successors and assigns, to be

1 present at a public hearing before the City Council, and thereat to present its views and opinions
2 thereof and to present for consideration action or actions alternative to the revocation of such Permit.

3 (b) Permittee may terminate all or any portion of the Facilities under this Permit or any
4 applicable Sub-Permit, at Permittee's sole discretion, upon 180 calendar days prior written notice to
5 the City. In the event that Permittee exercises its right of early termination under this Section 6,
6 Permittee shall pay all undisputed Permit Fees then due under the applicable Sub-Permit with
7 respect to the terminated Facilities, together with any other fees or charges then due and owing to
8 the City under the applicable Sub-Permit, and in compliance with any other required provisions
9 herein.

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

11 (a) Notices and Contacts. All notices hereunder must be in writing and shall be sent
12 certified mail, return receipt requested, or by commercial overnight carrier, to the City at: Public
13 Works Engineering, Regulatory & Analytics (ERA), 201 W. Colfax Avenue, Dept. 507, Denver, CO
14 80202 (with a copy via email to Denver.PWERA@denvergov.org, and to Permittee at: 180
15 Washington Valley Road, Attention: Network Real Estate, Bedminster, NJ 07921. Notice by certified
16 mail or by commercial overnight carrier shall be effective upon actual receipt or refusal as shown on
17 the receipt obtained pursuant to the foregoing.

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

26 (c) Public Records. Permittee acknowledges that information submitted to the City may
27 be open to public inspection and copying under state law. Permittee may identify information, such
28 as trade secrets, proprietary financial records, customer information or technical information,
29 submitted to the City as confidential. Permittee shall prominently mark any information for which it
30 claims confidentiality with the word "Confidential" on each page of such information prior to
31 submitting such information to the City. Within five (5) working days of receiving a request for
32 disclosure of any information so marked as confidential, the City shall provide Permittee with written
33 notice of the request in accordance with Section 7(a) above, each including a copy of the request.

1 Permitee shall have thirty (30) working days within which to provide a written response to the City,
2 before the City will disclose any of the requested confidential information. The City retains the final
3 discretion to determine whether to release the requested confidential information, in accordance with
4 applicable laws. Permitee is also entitled to take all action under the law to prevent disclosure of its
5 confidential, trade secret, and proprietary information.

6 COMMITTEE APPROVAL DATE: August 25, 2016 by Consent

7 MAYOR-COUNCIL DATE: August 30, 2016

8 PASSED BY THE COUNCIL: _____

9 _____ -PRESIDENT

10 ATTEST: _____ -CLERK AND RECORDER,
11 EX-OFFICIO CLERK OF THE
12 CITY AND COUNTY OF DENVER

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

14 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.

18
19 Denver City Attorney

20
21 BY: _____, Assistant City Attorney DATE: _____