

**NONEXCLUSIVE FRANCHISE AGREEMENT  
FOR PURPOSE OF CONVEYING DATA COMMUNICATIONS**

**Between**

**THE CITY OF ELY, NEVADA**

**and**

**COMMNET OF NEVADA, LLC  
A Nevada Limited Liability Company**

**January \_\_\_\_\_, 2022**

**NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF ELY AND  
COMMNET OF NEVADA, LLC (“GRANTEE”), AN INTERNET SERVICE PROVIDER**

THIS FRANCHISE AGREEMENT (hereinafter “Agreement”) is entered into as of the \_\_\_\_ day of January 2022 (hereinafter the “Effective Date”), by and between the CITY OF ELY, Nevada, a municipal corporation and political subdivision of the State of Nevada (hereinafter referred to as “the City”), and COMMNET OF NEVADA, LLC, a Nevada Limited Liability Company, including Commnet Nevada, Subco, LLC, and any and all other wholly owned subsidiaries of Commnet of Nevada, LLC (hereinafter collectively referred to as “the Grantee”). The City and Grantee may also be collectively referred to in this Agreement as the “Parties” or, individually, as a “Party.”

**WITNESSETH:**

**WHEREAS**, the Grantee desires to provide telecommunication services (“Telecommunication Services”) within the City and in connection therewith to establish a telecommunication services network in, under, along, over, and/or across present and future rights-of-way and other property of the City, consisting of telecommunication services lines, wireless solutions, fiber cables, manholes, handholes, and all other necessary appurtenances (“System” or “Telecommunication Services Network”);

**WHEREAS**, the City, in the exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the Grantee a nonexclusive franchise to install, operate, repair, remove, replace, and maintain a Telecommunication Services Network in the City, for the benefit of the City and its residents;

**WHEREAS**, pursuant to NRS 266.285, the City has the authority to provide, by contract, franchise, or public enterprise, for any utility to be furnished to the city for the residents thereof;

**WHEREAS**, the City and Grantee have negotiated an arrangement whereby the Grantee may provide its Telecommunication Services within the City pursuant to the terms and conditions outlined in this Agreement, in accordance with Title 8, Chapter 3 of the Ely City Code, and with NRS 268.088, which provides that the City shall not impose any terms or conditions on a franchise for the provision of telecommunication service or interactive computer service other than terms or conditions concerning the placement and location of the telephone or telegraph lines and fees imposed for a business license or the franchise, right or privilege to construct, install or operate such lines; and

**NOW THEREFORE**, in consideration of the mutual covenants, terms, conditions and obligations contained herein, and for other good and valuable consideration, the City and the Grantee agree as follows:

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## **ARTICLE 1 FRANCHISE**

1.1 **Grant of Franchise.** Upon approval by the City Council and execution by the parties, this Agreement shall be deemed to constitute a contract by and between the City and the Grantee establishing a Telecommunication Services Franchise (“Franchise”), pursuant to which the Grantee is authorized and granted a special privilege to utilize certain public property in the manner and subject to the terms and conditions described herein. The Franchise granted hereunder shall, subject to the terms and conditions of this Agreement, confer upon the Grantee the nonexclusive authorization and special privilege to install, operate, repair, maintain, remove, upgrade, and replace its Telecommunication Services Network on, over, and under City-approved, City-owned utility easements, streets, roads and public right-of-way within the political boundaries of the City (hereinafter collectively referred to as the “City’s Rights-of-Way”) in order to provide Telecommunication Services.

1.2 **Grant of License.** As part of the foregoing Franchise, the Grantee is hereby given a revocable license to install wireless solutions and underground fiber optic cable in, on, or under City Rights-of-Way, so long as the City determines, in its sole discretion, that the location, method of installation, and use are acceptable. Notwithstanding any other provision contained herein, the revocable permit given hereby shall be automatically revoked if the Grantee fails to provide telecommunications services to at least one person or area in the City within ninety (90) days of installation of the Telecommunication Services Network pursuant to this Agreement. Further, a license may be revoked for any one of the reasons listed in 8-3-31(W) of the Ely City Code.

1.3 **Nonexclusive Franchise; Limitations.** This Agreement shall not be interpreted to confer any exclusive right, privilege, license, or franchise to occupy or use the public ways of the City for delivery of Telecommunication Services or any other purpose. Additionally, the Franchise herein granted shall not convey any right, title or interest in the public ways, but shall be valid for a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

1.4 **Incorporated Provision of Law.** Grantee shall comply with all the provisions and procedures set forth in the Ely City Code, particularly Title 8, Chapter 3 the Ely City Code and nothing set forth in this Agreement shall be construed to limit or nullify the validity or effect thereof.

1.5 **Franchise Territory.** The Franchise granted herein shall be limited to a specific geographic area of the City of Ely to be served by the Grantee (hereinafter “Franchise Area”), and the specific public ways necessary to serve such areas, as more specifically set forth hereafter.

1.6 **Encroachments.** Grantee shall only encroach in and on approved City Rights-of-Way and other City-owned property in accordance with this Agreement and shall independently obtain all permissions necessary to encroach on any property, to include privately-owned property within the City.

1.7 **Nondiscrimination.** Grantee shall make its Telecommunications Services available to any customer within its Franchise Area who shall request such service, without discrimination as to the terms, conditions, rates or charges for Grantee's services; provided, however, that nothing herein shall prohibit Grantee from making any reasonable classifications among differently situated customers.

## **ARTICLE 2 CONSIDERATION**

2.1 **Franchise Fee.** For and in consideration of the Franchise granted hereunder, the Grantee agrees to pay to the City the percentage of Grantee's gross revenues identified in Ely Code of Ordinances 8-3-30 ("Franchise Fee"). Such gross revenues shall exclude: (1) long distance access charges; (2) emergency 911 fees and surcharges; (3) equipment and other non-tariffed items which may be provided to the customers; and (4) any other franchise fees, permit fees, business fees, regulatory fees or taxes payable by the Grantee by reason of its engaging in the business of furnishing Telecommunication Services in the City. Such payments shall be made quarterly, within sixty (60) days after the expiration of each calendar quarter or portion thereof, during which the Franchise granted hereunder is in effect. The Franchise Fee shall be calculated based on revenues, as detailed above, generated by Grantee during the applicable quarter of the calendar year. Notwithstanding any other provision contained in this Section 2.1, the City may, by resolution, reduce the compensation to be paid for the franchise to an amount less than stated in this agreement for a set period of time, upon the expiration of which the compensation shall return to the amount stated herein.

2.2 **Performance Bond.** Simultaneously with the execution of this Franchise, Grantee shall file with the City a performance bond (hereinafter the "Bond"), payable to the City, securing the Grantee's faithful performance of its obligations under this Franchise. This Agreement shall not go into effect until after the Performance Bond is executed.

(a) **Bond Amount.** The principal sum of the Bond shall be One Hundred Thousand Dollars (\$100,000.00).

(b) **City's Rights; Compensation.** The City shall have the right to deduct the sums, expenses, liquidated damages, compensation, or late fees payable or due by Grantee under this Agreement from the Bond. Grantee shall make up any difference of the Bond within two (2) business days upon receipt of notice from the City for deduction of the Bond. If such Bond cannot cover the losses incurred to the City, Grantee shall make a timely payment to the City for the remainder of the losses incurred by the City, otherwise, the City may make further claim against Grantee for such remaining losses.

(c) **Execution.** The Bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of Nevada, with a financial condition and record of service satisfactory to the City. The Bond shall be in a form approved by the City Clerk or designee.

(d) **Return.** If the term of this Agreement expires and is not renewed pursuant to Article 4 of this Agreement, and Grantee has not breached the Agreement, the City shall return to Grantee the Bond in full. In the event of any uncured breach of this Agreement by Grantee, the City shall not return the Bond to Grantee until such time that all claims arising as a result of such uncured breach have been settled. During the term of Agreement, if the City unilaterally requires the early termination of this Agreement, the City shall return the Bond to Grantee in full without interest.

2.3 **Licenses and Permits.** Nothing in this Agreement shall relieve the Grantee of the obligation to obtain such City business and other licenses and permits as are then required for the furnishing, sale or distribution of wireless solutions and/or fiber optic services or otherwise conducting activities within the City; provided, however, the amount of annual gross receipts or revenues used to calculate the Franchise Fee shall be reduced by the amount of the annual business license or permit fee paid by the Grantee to the City for engaging in the business of the furnishing, sale or distribution of wireless solutions and/or fiber optic services to the inhabitants of the City. This paragraph shall not be interpreted as a waiver of Grantee's right to challenge a City licensing or permitting requirement through the appropriate legal process.

2.4 **Records and Reports.** The City shall have access at all reasonable hours to the Grantee's books, records, reports, contracts and bookkeeping and accounting procedures to the extent reasonably necessary to calculate or substantiate the amount of the Franchise Fee or to otherwise verify compliance with this Agreement, except as otherwise limited by any applicable privacy laws, including but not limited to 47 U.S.C. § 222. In addition to the foregoing, the Grantee shall, within thirty (30) days of the end of each year, file both an annual summary report showing gross revenues received by the Grantee from its operations in the City during the preceding twelve (12) month period and such other information as the City shall reasonably request with respect to the Grantee's use of the public roads and other public property within the City. Notwithstanding the foregoing, the City shall maintain the confidentiality of all records and reports obtained from the Grantee pursuant to this Section 2.4, unless disclosure is required pursuant to the Nevada Public Records law or otherwise by operation of law.

2.5 **Service to City.** Grantee shall make its Telecommunications Services available to the city at reasonable rates comparable to similarly situated users.

2.6 **City Costs; Reimbursement.** Grantee shall, within thirty (30) days after written demand therefor, reimburse the city in connection with any modification, amendment, renewal or transfer of the license or franchise or any license or franchise agreement.

### **ARTICLE 3 USE AND RELOCATION OF FACILITIES UPON CITY'S RIGHTS-OF-WAY**

3.1 **Franchise Rights to Use the Public Right-of-Way.** The Grantee shall have the right to use the City Rights-of-way authorized in Article 3 to construct and maintain its Telecommunication Services Network subject to the conditions set forth in this Agreement. Additionally, Grantee shall have the right to utilize easements across private property granted to

the City for public utility purposes (unless otherwise limited by the easement deed or by contract), provided the City's written permission, which shall be reasonably provided, is obtained in each case. Grantee specifically understands and acknowledges that certain City easements and rights-of-way may be prescriptive in nature, and that nothing in this Franchise Agreement extends permission to use an easement or right-of-way beyond the scope of the right that the City has acquired, and Grantee's right to use such easements and rights-of-way shall be subject to any applicable third party prior or after-acquired interests.

(a) **Compliance of Performance.** All work performed by Grantee in the City's Rights-of-Way shall be done in compliance with the City's most recent standards and specifications and in accordance with all applicable permit requirements, all of which shall not conflict with the City's use of said Rights-of-Way, the terms and conditions of this Agreement, and NRS 268.088. The Telecommunication Services Network shall further be installed, constructed, and maintained in accordance with the Ely City Code and any applicable Federal and state laws, orders of the Nevada Public Utilities Commissions, and all work performed in relation thereto shall be done in a good and workmanlike manner.

**3.2 Grantee Duty to Relocate; Subordinate to City Use.** Whenever the City shall require the relocation or reinstallation of any of the Telecommunication Services Network of the Grantee or its successors or assigns in any of the streets, alleys, rights-of-way, above ground facilities, or public property of the City, it shall be the obligation of the Grantee, upon notice of such requirement and written demand from the City to the Grantee, and within a reasonable time thereof, but not more than ninety (90) calendar days, weather permitting, to remove and relocate or reinstall such Telecommunication Services Network as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Grantee shall be at no cost to the City. Notwithstanding the foregoing, the duty of the Grantee to install or relocate its lines underground shall be subject to the provisions of paragraph 3.4 below. In the event the City or private third-party or a third-party utility has required the Grantee to relocate its Telecommunication Services Network to accommodate a private third-party or third-party utility, Grantee may pursue any and all legal and equitable means to obtain compensation from such private third-party or third-party utility.

**3.3 Duty to Obtain Approval to Move Grantee's Property; Emergency.** Except as otherwise provided in this Agreement, the City, without the prior written approval of the Grantee, shall not intentionally alter, remove, relocate, or otherwise interfere with any of the Grantee's Telecommunication Services Network. However, if it becomes necessary to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Telecommunication Services Network of the Grantee because of a fire, emergency posing an imminent threat of serious harm to persons or property, disaster, or imminent threat of serious harm to persons or property thereof, these acts may be done without prior written approval of the Grantee, and the repairs thereby rendered necessary shall be made by the Grantee, without charge to the City.

**3.4 Location to Minimize Interference.** All lines, pipes, conduits, equipment, property, structures, handholes, manholes, and assets of the Grantee shall be located so as to minimize interference with the use of streets, alleys, rights-of-way and public property, including use and occupancy by others, and shall reasonably avoid interference with the rights of owners of

private property that abuts any of said streets, alleys, rights-of-way, or public property. Grantee must cooperate with City and other franchisees and users of public property, and coordinate activities and schedules to minimize public inconvenience, disruption or damages.

### **3.5 Requirements Applicable to Placement of Telecommunication Services Network in City's Rights-of-Way.**

(a) Infrastructure Damage. If any portion of a sidewalk, curb, gutter, street, alley, public road, right of way or other public property shall be damaged by reason of defects in the Telecommunications Services Network that is utilized, maintained or constructed under this Franchise, or by reason of any other cause arising from the Grantee's operations, Grantee shall, at its own cost and expense, within sixty (60) days, unless delayed by abnormal weather conditions or acts of God, labor disputes or unavailability of materials, repair any such damage and restore such sidewalk, curb, gutter, street, alley, public road, right of way or other public property, or portion thereof, to as good a condition as it existed before such excavation disturbance, work or other cause of damage occurred.

(b) Relocation. Subject to paragraph 3.2 above, the Grantee shall relocate, without expense to the City, and within a reasonable time, but in not more than ninety (90) calendar days after the delivery of notice from the City, all or part of the Telecommunication Services Network installed pursuant to this Franchise if and when made necessary by any change of grade, alignment or width of any public road shall remain under the jurisdiction of City as a public road; further provided that the City may, if available, provided a suitable rights-of-way within which Grantee may relocate its Telecommunication Services Network. Notwithstanding the foregoing, in the event the City no longer owns the public road or right-of-way in which Grantee's Telecommunication Services Network is located, all obligations of the City hereunder with respect to the public road or right-of-way shall thereupon terminate. Nothing herein shall be construed to prohibit or restrict any obligation the State or any other third party might otherwise have for the cost of relocating Grantee's Telecommunication Services Network.

(c) All of the Telecommunication Services Network of the Grantee which are installed and/or used pursuant to this Franchise shall be installed, constructed and maintained in a good and workmanlike manner and in compliance with all applicable laws and ordinances then in effect, together with the orders, rules and regulations of the Public Utilities Commission of the State of Nevada. Before the work of installing new or the upgrade of existing Telecommunication Services Network is commenced, the Grantee shall coordinate the location thereof with the City and obtain the City's approval of the location wherein Grantee wishes to install or upgrade existing Telecommunication Services Network, and upon said approval, as an accommodation to the Grantee, the City will provide historical and other information to assist in the location of such lines and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits and other structures located in or under public roads and rights-of-way of the City; provided, however, the City shall not be responsible for the accuracy of any such information and Grantee shall have the sole responsibility for avoiding sewers, water pipes, conduits and other structures that are present. It is in the City's sole discretion whether to approve or deny the location that Grantee wishes to install its Telecommunication Services Network.

(d) Grantee shall comply with all provisions of the Ely City Code and state and federal law with regard to the placement of Telecommunication Services Networks.

3.6 **Construction Standards.** Prior to any construction or excavation, the Grantee shall comply with 8-3-32 of the Ely City Code and submit plans stamped by a registered Nevada professional engineering depicting the locations of the proposed Telecommunication Services Network. Plans must be reasonably approved by the City and proper permits obtained prior to commencing such work. Grantee shall further supply the City, at no cost and on a yearly basis, an accurate as-built record of all Telecommunication Services Network located in the City's Rights-of-Way.

#### **ARTICLE 4 TERM AND RENEWAL**

4.1 **Term and Renewal.** The Franchise granted to Grantee shall begin on the Effective Date of this Agreement and terminate at midnight ten (10) years thereafter (hereinafter the "Initial Term"), unless sooner terminated as provided herein. At the expiration of the Initial Term, the Franchise granted herein may be renewed by the Grantee, subject to section 8-3-29 of the Ely City Code, upon the same terms and conditions as are contained in this Agreement for an additional ten (10) year period by providing the City's representative designated herein written notice of the Grantee's intent to renew not less than one hundred fifty (150) calendar days before the expiration of the initial ten (10) year Term. Both Parties herein must agree to the renewal in writing.

4.2 **Final Expiration.** Upon final expiration of the Term, the Agreement shall immediately terminate, all ownership interests, licenses and other rights to the control, and no Party shall owe the other Party any further duties, obligations or consideration, save those duties and obligations which expressly survive the termination of this Agreement.

4.3 **Rights of Grantee Upon Expiration, Termination, or Revocation.** Upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between the Grantee and the City, or by revocation or forfeiture, the Grantee shall have the right to remove from the City's Rights-of-Way any and all of its Telecommunication Services Network, but in such event, it shall be the duty of the Grantee, immediately upon such removal, to restore the City's Rights-of-Way from which such Telecommunication Services Network was removed to as good a condition as the same was in before the removal was effected.

Alternatively, upon expiration of the Franchise granted herein, whether by lapse of time, by agreement between the Grantee and the City, or by revocation or forfeiture, the Grantee shall have the right to convey any or all of its Telecommunication Services Network to the City or a third party by way of bill of sale, subject to the prior approval from the City.

4.4 **Termination.** Either Party may terminate, upon (30) days' written notice, this Agreement if the other Party has violated any material term of this Agreement and the defaulting



Party has failed to cure such breach, all as further described and in accordance with the Default and Termination Article below.

## **ARTICLE 5 DEFAULT AND TERMINATION**

5.1 Any of the following shall constitute an event of default: (a) a Party fails to perform or observe any representation, warranty, covenant, condition or agreement and fails to cure such breach within thirty (30) days after written notice of such breach from the non-breaching Party; (b) any representation or warranty made by a Party hereunder or in any other provided to one Party by the other Party pursuant to this Agreement proves to be incorrect in any material respect when made; (c) a Party commences a bankruptcy or reorganization proceeding, declares itself insolvent, is placed in receivership by a court of competent jurisdiction, or is subject to an assignment for the benefit of that Party's creditors; and/or (d) Grantee satisfies one or more of the conditions outlined in 8-3-31(W) of the Ely City Code.

5.2 In the event of a default by either Party, the non-defaulting Party shall have the right to exercise any or all of the following remedies to the extent applicable after the expiration of the 30 day cure period set forth in Section 5.1: (a) terminate this Agreement; (b) proceed by court action to enforce specific performance of this Agreement and any remedy provided for herein and/or recover all damages of any default or exercise any other right or remedy available at law or in equity; and (c) disconnect and/or remove the applicable wireless solutions, fiber at the expense of the defaulting party. Any such termination shall in no way affect or alter the validity of this Agreement with respect to the rights granted to the non-defaulting Party hereunder and the non-defaulting Party may avail itself of all other rights it receives pursuant to this Agreement.

## **ARTICLE 6 LIABILITY**

6.1 **Representations and Warranties.** Each Party represents and warrants that (a) the undersigned has full authority to enter into this Agreement on its behalf; (b) it has full right and authority, including the enactment of any requisite resolutions, to perform its respective obligations under this Agreement; (c) the execution of this Agreement is not violative of its charter, by-laws or any law, regulation or agreement by which it is bound or to which it is subject; and (d) no litigation or governmental proceeding is pending or threatened in writing which might have a material adverse effect on this Agreement, the transaction contemplated by this Agreement or the rights or obligations of the Parties hereunder.

6.2 **Indemnification.** Grantee shall indemnify and hold harmless the City, to include their respective directors, members, officers, and employees, representatives, attorneys, from and against all losses, damages, liabilities, and expenses, including reasonable attorneys' fees and court costs, to the extent caused by or arise out of use of or performance of work by Grantee herein described.

6.3 **Limitations of Liability.** The Parties hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the

reasonable control of the Party, including, to the extent applicable, the following: war; insurrection; strikes; walk-outs; riots; floods; earthquakes; geologic or hydrologic features which could not have been discovered through reasonable diligence prior to the Effective Date; fires; inclement weather, including high winds, which render performance hereunder impossible; acts of God; and governmental restrictions imposed or mandated by governmental entities other than the Parties which could not have been foreseen prior to the Effective Date.

6.4 In no event shall either Party be liable to the other Party for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with, this agreement, including but not limited to, lost profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of data, incurred or suffered by either party, whether in an action in contract or tort, even if the other party or any other person has been advised of the possibility of such damages. Except as expressly set forth in this Agreement, the Parties make no warranty, express, implied, statutory, or otherwise as to the description, quality, merchantability, completeness or fitness for any particular purpose or use of the equipment transferred, exchanged or licensed pursuant to this agreement and any such warranties are hereby excluded and disclaimed.

## **ARTICLE 7 GENERAL PROVISIONS**

7.1 **Grantee Duty to Approve Franchise Agreement.** If the Grantee has not duly executed this Agreement within thirty (30) calendar days after the effective date of the City Council's approval and execution, this Agreement and all rights granted hereunder shall be null and void.

7.2 **Notices.** Under this Agreement, whenever provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if the said notice is in writing and is personally served or is deposited in the mail in a properly stamped envelope to be delivered by certified mail, return receipt requested, addressed as follows:

If to the City: City of Ely  
501 Mill Street  
Ely, Nevada 89301  
Attention: Jennifer Lee, City Clerk  
(775) 289-2430

If to the Grantee: Commnet of Nevada, LLC  
1585 South Perry St., Suite D/K  
Castle Rock, Colorado 80104  
Attention: Rene Roque  
(505) 929-4378

With a copy to

Commnet of Nevada, LLC  
400 Northridge Rd, Suite 1100  
Atlanta, GA 30350  
Email: legalnotices@atni.com

Changes in the respective addresses to which such notices shall be directed may be made from time to time by either Party. Notice of any such change in address shall be timely directed to the other Party in writing by certified mail, return receipt requested.

**7.3 Relationship of the Parties.** Neither Party is the agent, employee, or legal representative of the other. Each Party has and hereby retains the right to exercise full control of and supervision over the performance of its obligations hereunder and full control over the employment, direction, compensation, and discharge of its employees assisting in the performance of such obligations.

**7.4 Assignment.** Neither Party may transfer or assign this Agreement or the Party's duties and obligations contained in this Agreement without prior written consent of the other Party, except that Grantee may assign to any entity that controls Grantee, is controlled by Grantee, or is subject to the same control as Grantee. Grantee shall comply with section 8-3-31 of the Ely City Code for any transfer or assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns, subject to the foregoing restriction on transfers and assignments.

**7.5 Severability.** If any section, sentence, paragraph, term or provision of this Agreement is for any reason determined to be or rendered illegal, invalid, or superseded or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof.

**7.6 No Presumption.** This Agreement is the joint work product of both Parties hereto and both Parties have participated in its preparation. Therefore, in the event of ambiguity no presumption shall be imposed against any Party by reason of document preparation. The Parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting Party.

**7.7 Rules of Construction.** The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of the terms, provisions, or conditions of this Agreement. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa. Unless otherwise expressly provided herein, any agreement, instrument, statute, or code defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute, or code as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in

the case of statutes and codes) by succession of comparable successor statutes and codes and references to all attachment thereto and instruments incorporated therein.

7.8 **Entire Agreement.** This document, including any Exhibits, contains the entire Agreement between the Parties hereto with respect to matters covered hereby, and no other agreement, statement or promise made by any party hereto, or agent of such party, which is not contained or incorporated herein, save and except any ordinance or other action of the Ely City Council in furtherance hereof, shall be binding or valid. This Agreement replaces and supersedes any existing contract between the City and Grantee pertaining to the subject matter hereof, to include the services described herein and the Franchise Fees associated therewith.

7.9 **Amendment.** No purported modification, amendment or other change in this Agreement shall be valid unless set forth in writing, and signed by both Grantee and the City, and approved by the City Council if so required.

7.10 **Survival.** Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Termination or expiration of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of such termination or expiration. A Party's indemnification and confidentiality obligations shall survive termination or expiration of this Agreement in the manner described herein.

7.11 **Waiver.** Failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a waiver or relinquishment of any such terms or conditions. To the contrary, the same shall remain at all times in full force and effect and any such waiver must be in writing and signed by both Parties. Additionally, one or more waivers of any covenant, agreement, or condition of default regarding provisions of this Agreement by either the City or Grantee shall not be construed as a waiver of a further breach of the same covenant, agreement, condition or the right of such party thereafter to enforce every provision.

7.12 **Rights, Remedies and Benefits Cumulative.** The rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other said rights, remedies and benefits, nor of any other rights, remedies and benefits allowed by law.

7.13 **Governing Law.** This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Nevada, without reference to its conflicts or law principles.

7.14 **Jurisdiction and Venue.** Jurisdiction and venue for any disputes arising under this Agreement shall be in the United States District Court for the District of Nevada (Northern Division) or, if the Federal court lacks subject matter jurisdiction, then in the Seventh Judicial District Court in and for the County of White Pine, State of Nevada. Each Party waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding and any right of

jurisdiction on account of the place of residence or domicile of any Party thereto. Each Party hereby irrevocably and unconditionally waives the right to a jury trial in connection with any Claim arising out of or related to this Agreement.

7.15 **Binding Agreement.** The Parties represent that (a) when executed by their respective representatives, this Agreement shall constitute a binding obligation of the parties; and (b) each Party has complied with all applicable statutes, ordinances, resolutions, by-laws and other legal requirements needed to enter into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

7.16 **Incorporation and Recitals.** The above recitals are true and correct and are incorporated herein by this reference as a part of this Agreement.

7.17 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Electronic signatures shall be treated as originals.

**IN WITNESS WHEREOF**, and in confirmation of their consent and agreement to the terms and conditions in this Agreement and intending to be legally bound hereby, the Parties have caused their authorized representatives to execute this Franchise Agreement for Telecommunication Services effective as of the date first above written.

*[SIGNATURE PAGE(S) FOLLOWING]*

**COMPANY:**

**COMMNET OF NEVADA, LLC**  
**A Nevada Limited Liability Company**

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

Name:

Title:

Address: Commnet of Nevada, LLC  
1585 South Perry St., Suite D/K  
Castle Rock, Colorado 80104  
Attention: Rene Roque  
(505) 929-4378  
Rene.Roque@commnetbroadband.com

**CITY:**

**CITY OF ELY**

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

Name: Nathan Robertson

Title: Mayor

Address: 501 Mills Street  
Ely, Nevada, 89301  
Tel: (775) 289-2430  
Email: [CityClerk@cityofelynv.gov](mailto:CityClerk@cityofelynv.gov)  
Copy to: [attorney@cityofelynv.gov](mailto:attorney@cityofelynv.gov)