

**AGENDA**  
**EAGAR TOWN COUNCIL**  
**SPECIAL MEETING**  
**November 22, 2022**



**NOTICE OF A SPECIAL MEETING TOWN OF EAGAR  
NOVEMBER 22, 2022  
6:00 P.M.  
COUNCIL CHAMBER, 22 WEST 2<sup>ND</sup> STREET**

PURSUANT TO A.R.S. 38-431.02, NOTICE IS HEREBY GIVEN TO THE MEMBERS OF THE TOWN COUNCIL OF THE TOWN OF EAGAR AND THE GENERAL PUBLIC THAT THE TOWN COUNCIL WILL HOLD A **SPECIAL MEETING OPEN TO THE PUBLIC ON TUESDAY, NOVEMBER 22, 2022, BEGINNING AT 6:00 P.M., IN THE COUNCIL CHAMBERS LOCATED AT 22 W. 2<sup>ND</sup> STREET, EAGAR, ARIZONA.**

**AMENDED AGENDA**

**1. WELCOME AND CALL MEETING TO ORDER**

**2. ROLL CALL**

**3. PLEDGE OF ALLEGIANCE**

**4. INVOCATION**

**5. SUMMARY OF CURRENT EVENTS**

- A. MAYOR
- B. COUNCIL
- C. STAFF

**6. NEW BUSINESS**

- A. DISCUSSION AND POSSIBLE ACTION TO GO OUT TO BID FOR THREE GATES FOR THE POND (BRYCE HAMBLIN)
- B. DISCUSSION AND POSSIBLE ACTION TO GO OUT TO BID FOR AN ARCHITECTURE FOR CDBG GRANT PROJECT AT RAMSEY PARK (BRITNEY REYNOLDS)
- C. DISCUSSION AND POSSIBLE ACTION TO APPROVE COMMUNICATIONS CONTRACT BETWEEN THE TOWN OF EAGAR AND COMMNET (BRYCE HAMBLIN)

**ADDED D.** DISCUSSION AND POSSIBLE ACTION TO APPROVE THE LICENSE AGREEMENT BETWEEN THE TOWN OF EAGAR AND AGM GLOBAL VISION FOR USE OF THE TOWN SHOOTING RANGE (SHANE BEVINGTON)

**7. SIGNING OF DOCUMENTS**

**8. ADJOURNMENT**

THE PUBLIC IS WELCOME TO PLACE ITEMS ON THE COUNCIL AGENDAS WITH THE APPROVAL OF THE MAYOR OR TOWN MANAGER. A "PROPOSED AGENDA ITEM" REQUEST FORM IS AVAILABLE IN THE TOWN CLERK'S OFFICE OR AT [WWW.EAGARAZ.GOV](http://WWW.EAGARAZ.GOV) UNDER THE COUNCIL AND CLERK LINKS. ALL REQUESTS ARE DUE INTO THE TOWN CLERK'S OFFICE BY WEDNESDAY AT 12:00 NOON THE WEEK PROCEEDING THE COUNCIL MEETING. REGULAR COUNCIL MEETINGS ARE HELD ON THE 1<sup>ST</sup> TUESDAY, AND 3<sup>RD</sup> TUESDAY OF THE MONTH AS BUSINESS ALLOWS.

IF ANYONE WISHING TO ATTEND THIS MEETING HAS SPECIAL NEEDS DUE TO A DISABILITY, PLEASE CONTACT THE TOWN CLERK AT 928-333-4128 TWENTY-FOUR HOURS PRIOR TO THE MEETING AND ACCOMMODATIONS WILL BE PROVIDED. ANYONE NEEDING INFORMATION ON THE CURRENT MEETING, PLEASE CONTACT THE TOWN CLERK AT 928-333-4128.

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

Between

**THE CITY OF EAGAR ARIZONA**

and

**COMMNET AZ, LLC  
A Delaware Limited Liability Company**

**AGREEMENT # \_\_\_\_\_**

**NONEXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF EAGAR AND COMMNET AZ, LLC ("GRANTEE"), AN INTERNET SERVICE PROVIDER**

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into as of the **7** day of **October**, 2022 (hereinafter the "Effective Date"), by and between the City of Eagar, Arizona, a municipal corporation and political subdivision of the State of Arizona (hereinafter referred to as "the City"), and Commnet AZ, LLC, a Delaware Limited Liability Company, together with its Affiliates (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 A.R.S. §§ 11-201 and 11-251, 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;

**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:

**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 rights-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 one hundred eighty (180) 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 the 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 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 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 **three and a half percentage (3.5%)** of Grantee's gross revenues. Such gross revenues shall exclude: (1) long distance access charges; (2) emergency 911 fees and surcharges; (3) equipment and other nontariff 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 ten (10) 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 Arizona, 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 Government & Public Safety Concessions:**

(a) The City reserves the right to lease at agreed upon commercial terms, four (4) strands of dark fiber from the Grantee, which shall be for the City's exclusive use, and not for subleasing for other commercial services.

- (b) In the event that any underground construction is necessary, and the City desires to have such separate facilities installed and will cover the cost difference of either a) a micro duct product or b) a separate smaller duct to be installed at the same time, the City will submit a request to Grantee, and the parties will meet to discuss the request from the City and review ahead of construction.
- (c) In the event a multi-tenant tower is constructed as part of this project, the City shall have the right to use ten (10) feet of tower space on one (1) leg of the tower for public safety and internal use at or above the top eighty percent (80%) of the tower. The right to use ten feet of tower space shall be subject to the following limitations: (i) the equipment will not include microwave dishes without prior approval from Grantee, (ii) the equipment will not exceed 20% of the structural capacity of the tower (iii) a determination of whether the space is available at the time of the request to install such equipment, and would not require relocation of another co-location tenant on the tower, and (iv) the tower has sufficient structural capacity without modifications to support the requested equipment for the City at the time of the request to install such equipment. All frequencies will comply with FCC standards and regulations.

**2.4 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.

**2.5 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 Public Records law or otherwise by operation of law.

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

**2.7 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. The Telecommunication Services Network shall further be installed, constructed, and maintained in accordance with the City Code and any applicable Federal and state laws, orders of the 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 the 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 force majeure, 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 Arizona. 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 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 the City Code and submit plans stamped by a registered 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 reflecting any additions or changes to the Telecommunication Services Network.

#### **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 twenty (20) 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, 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 eighty (180) calendar days before the expiration of the initial 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. In the event any portion of the Fiber plant is abandoned by the Grantee, all abandoned assets will become the property of the City by default.

**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 upon written notice from the City, 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, which approval shall not unreasonably be withheld, conditioned or delayed.

**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 the 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; force majeure; 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 Councils' 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: Clerk of the Town of Eagar  
P.O. Box 1300/ 22 W. 2<sup>nd</sup> Street  
Eagar, Arizona 85925

If to the Grantee: Commnet AZ, LLC  
1562 N. Park St.  
Castle Rock, Colorado 80109

With a copy to: Commnet AZ, 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 the 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 City Board of Supervisors 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/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 Arizona, without reference to its conflicts or law principles. Jurisdiction and venue for any disputes arising under this Agreement shall be in the Superior Court in and for the City of Apache, State of Arizona.

**7.14 Binding Arbitration.** Any controversy or claim arising under or in relation to this contract, or any modification of it, shall be settled by binding arbitration. An arbitrator shall be appointed by the Apache County Superior Court and arbitration shall be held in accordance with the Arizona Rules of Civil Procedure, Rules 72-77. The parties consent to the jurisdiction of the Apache County Superior Court, and to the service of process, notices of motion or other applications outside Arizona by registered mail or by personal service, provided a reasonable time for appearance is allowed. 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 Anti-Forced Labor.** Pursuant to A.R.S. § 35-394, Grantee hereby certifies that it does not currently and will not for the duration of this Agreement use the forced labor of ethnic Uyghurs in the People's Republic of China; any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. Should Grantee become aware during the term of this Contract that it is not in compliance with A.R.S. § 35-394, it shall notify the City/City within five business days.

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

**7.18 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]***



**FRANCHISE AGREEMENT****AGREEMENT # \_\_\_\_\_****SIGNATURE PAGE****COMPANY:**

**COMMNET AZ, LLC**  
**A Delaware Limited Liability Company**

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

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

Name: W T GuthrieTitle: CEO

Address: Commnet AZ, LLC  
1562 N. Park St.  
Castle Rock, CO 80109

**CITY OF EAGAR:**

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

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

Name: Bryce Hamblin

Title: Mayor

Address: P.O. Box 1300/ 22 W. 2<sup>nd</sup> Street  
Eagar, Arizona 85925



AGM Global Vision  
173 West Main Street, PO Box 962  
Springerville, AZ 85938, USA

T: 928.333.4570  
email: [info@agmglobalvision.com](mailto:info@agmglobalvision.com)  
[www.agmglobalvision.com](http://www.agmglobalvision.com)

## **LICENSE AGREEMENT FOR USE OF THE TOWN OF EAGAR SHOOTING RANGE AND FIREARMS TRAINING FACILITY**

THIS AGREEMENT is made and entered into on this 30th day of November, 2022 by and between the Town of Eagar ("TOWN") and AGM Global Vision, LLC. ("USER") Town and USER are sometimes referred to as the "Parties, and individually as "PARTY".

WHEREAS, USER desires to use the TOWN's Shooting Range and Firearms Facility (RANGE) under the terms and conditions hereafter set forth;

NOW, THEREFORE, the parties hereby agree as follows:

1. License to Use RANGE. The TOWN agrees to grant USER a non-exclusive license to use the RANGE for AGM product training, qualifications, and demonstrations.
2. Term. The term of this Agreement shall be for twenty-four (24) months from the effective date of this Agreement, unless sooner terminated by either Party.
3. Scheduling.
  - a.) TOWN and USER will cooperate to establish the exact times that USER will use the RANGE, and the TOWN will maintain this schedule in a master calendar. The TOWN has final authority to approve USER's schedule and the master calendar.
  - b.) USER may elect to cancel its reservation by notifying the TOWN in writing no less than twenty-four (24) hours prior to the assigned reservation date.
  - c.) If USER requests to extend its assigned reservation time on the day of the booking, such an extension will be at the discretion of Eagar Police Department on-site personnel and subject to availability.
4. Use of the RANGE.
  - a.) USER acknowledges and understands that Eagar Police Department Operators ("Operators") will not, and shall not be requested to, provide instruction regarding any aspect of the facility or its use. USER agrees that the Operator's sole purpose is to manage facility equipment and to act as a general safety officer only when present.
  - b.) USER shall supply its personnel with all targets, ammunition, weapons, and other equipment necessary to use the RANGE for firearms testing and evaluation. All such equipment shall be in good working condition.

- c.) USER shall comply with the RANGE safety rules established by the TOWN or by the Occupational Safety and Health Administration and all orders of Town personnel, including but not limited to the operators. The current safety rules in effect are attached as Exhibit "A" and incorporated herein by reference.
  - d.) After using the RANGE, USER personnel shall leave the RANGE in the same condition it was before use including, but not limited to, removal of shell casings and all other debris.
  - e.) USER may deposit a temporary structure at the RANGE for on-site storage of RANGE related support items (e.g.: target frames, targets, cleaning gear, etc.). Temporary structure is envisioned to be a shipping/freight container or pre-built shed or something similar as opposed to a site-built temporary structure.
5. **Consideration.** In exchange for use of the Shooting Range and Firearms Training Facility, USER shall make ongoing improvements to the RANGE in collaboration with the priorities and preferences of the TOWN and/or the Eagar Police Department commensurate with the time and use of the RANGE by USER. The parties agree to the following initial improvements to the RANGE as the initial consideration for the use of the Shooting Range and Firearms Training Facility.
- a. Installation of power pole with meter on SW corner for RANGE,
  - b. Trenching and underground electrical wiring to point of service locations,
  - c. Lighting installation at firing line stand-offs at the RANGE,
  - d. Lighting installation at RANGE hut, and,
  - e. Site surface grading and gravel installation to improve use.
- Additional improvement requests/options will be requested by the TOWN and/or Eagar Police Department dependent on the time and use of the RANGE by USER.
6. **Termination.**
- a.) Either party shall have the right to terminate this Agreement for any reason or for no reason upon thirty (30) calendar days' written to the other party.
  - b.) In the event of termination or cancellation of this Agreement by TOWN, USER agrees to cease use of the RANGE upon receipt of such notice.
7. **Notices.** Any notices, bills, invoices, or other communications provided pursuant to this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving Party's regular business hours; or (b) on the second business day following deposit in the United States Postal Service mail, such registered or certified, postage prepaid and addressed as follows, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this Section:

173 W. Main Street #962  
Springerville, AZ 85938  
USA

8. Indemnification. USER shall indemnify, defend, and hold harmless TOWN, its officers, agents, and employees against any and all claims, causes of action, damages, suits, judgments, liabilities or financial losses (including, without limitation, attorney's fees and costs), including death or injury to any person or damage to or destruction of any property, arising out of or occurring in connection with any act or omission of USER, its officers, agents, employees, or representatives during performance of this Agreement or use of the RANGE.
9. Assumption of Risk and Waiver. USER may make an appointment with the TOWN to inspect the RANGE prior to use. USER acknowledges that its use of the RANGE may involve risk of serious injury or death. USER recognizes and accepts that the RANGE may not be suitable for firearms training or qualification of any kind and accepts the RANGE with all defects, latent or patent. USER, on behalf of itself and its personnel as a material part of the consideration for this Agreement, hereby assumes the risk of and releases TOWN from any and all liability of any kind whatsoever that may arise out of the use of the RANGE by USER, including, but not limited to, any defect, latent or patent, or any act or omission of TOWN its officers, agents, or employees related to this Agreement or the RANGE.

The foregoing assumption of risk shall be effective except to the extent any liability is caused by the gross negligence or willful misconduct of TOWN, shall survive termination of this Agreement: and is in addition to any other rights or remedies which TOWN may have under the law or under this Agreement.

10. Insurance. USER shall maintain in full force and effect, at all times during use of the RANGE, a Commercial General Liability Insurance coverage. This policy shall have minimum limits for Bodily Injury Liability and Property Damage Liability of \$1,000,000 for each occurrence. This policy shall name the TOWN as an additional insured.
11. Assignment. The provisions of this Agreement shall be binding upon and, subject to any prescribed limitations on the right of assignment, shall insure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives. USER shall not assign this Agreement, in whole or in part, without the prior written approval of TOWN. Any attempt by USER to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.
12. Entire Agreement; Amendment. This document contains the entire agreement between the parties relating to the services, rights, obligations, and covenants contained herein and assumed by the parties respectively. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreements not incorporated herein shall be binding on any of the parties hereto.

13. Governing Law; Venue. The interpretation and implementation of this Agreement shall be governed by the laws of the State of Arizona. If any Party initiates an action to enforce the terms of this Agreement or declare rights hereunder, the parties agree that the venue thereof shall be the County of Apache, Arizona.
14. Authorization. Each person executing this Agreement on behalf of USER represents and warrants that he or she is dully authorized to execute and deliver this Agreement on behalf of USER and that this Agreement is binding on USER in accordance with its terms.
15. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgement or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions.

**IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this agreement as of the date and year first written above.**

**Town of Eagar, Arizona:**

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

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

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

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

**AGM GLOBAL VISION, LLC**

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

Name: Allen R. Harding

Title: President

Date: 30 November 2022

**EXHIBIT A:**

**Town of Eagar  
Shooting Range and Firearms Training Facility  
Eagar Police Department**

**174 South Main Street  
Eagar, AZ 85925**

**\*RANGE SAFETY PLAN\***

**Basic Firearms Safety Rules**

- 1. TREAT ALL FIREARMS AS IF THEY ARE LOADED.**
- 2. NEVER LET THE MUZZLE COVER ANYTHING YOU DO NOT INTEND TO DESTROY.**
- 3. KEEP YOUR FINGER OFF OF THE TRIGGER UNTIL YOU DECIDE TO SHOOT.**
- 4. BE SURE OF YOUR TARGET AND WHAT IS BEYOND IT.**

**Range Safety Rules**

1. No outside agency will use the live Training Facility without designated Range Safety Officer.
2. All Range Officers will review these Range Safety Rules with students at the beginning of each training session.
3. Eye and ear protection will be used at all times while in the shooting ranges.
4. Students and staff will know the exact location of and have immediate access to a first aid kit.
5. All injuries or observed unsafe conditions will be reported to range staff immediately.
6. Firearms remain holstered or cased until Range Officer gives a command to begin any live fire exercise.
7. Keep firearm muzzles pointed down range. **AT NO TIME, ARE LOADED FIREARM MUZZLES TO BE POINTED UP.**
8. Do not pick anything up from the floor in the live area until all weapons are declared cold and Range Officer declares the range is safe to do so.
9. If you have a malfunction with your firearm, clear it while pointing it in a safe direction and continue the exercise. If you cannot clear the malfunction, keep your firearm pointed in a safe direction and maintain a safe position on the firing line until the exercise is over.
10. Be aware of possible crossfire situations during multiple shooter exercises.
11. Targets are to be placed so penetrating rounds will not strike the walls, floor, lights or equipment.
12. Firearms will be prepared for disassembly on the firing line. (Remove magazine, clear chamber, and press trigger while pointing pistol safely down range.)
13. Magazines may be reloaded in the designated live fire area.
14. Weapons are to be reloaded in the live fire area while pointed safely down range. The weapon operator shall be on the firing line with no one between them and the targets down range.
15. All unused ammunition will be removed from the live fire areas and cabana area.

16. Any damage to the Training Facility will be reported immediately to Eagar Police Department Training Facility Staff. In the event that Eagar Police Department Training Facility Staff is not available, the on-duty Watch Commander will be notified. If the damage creates a safety problem for continued use, the facility will be taken out of service and all Training Facility Staff will be notified. Yellow crime scene or caution tape across a range entryway will signify that the facility is out of service.
17. Outside agencies will be responsible for providing all of their own safety, training and range supplies. This includes, but is not limited to, targets, eye and ear protection, ammunition, and any other items used in the course of their training.
18. Upon completion of training, all brass and debris will be cleaned up by the user. Debris that will not fit in provided trash receptacles will be bagged for removal by AGM staff.
19. Any accidental discharges at the facility outside of the designated live fire areas shall be reported immediately to Eagar Police Department Training Facility Staff. In the event that staff is not available the on-duty Watch Commander will be contacted immediately.
20. No live ammunition shall be used for demonstration or educational manipulation outside of the designated live fire areas.
21. The Range Safety Rules will be adhered to at all times.
22. Failure to comply with the Range Safety Rules will be grounds for the immediate termination of user agency training. Training may be allowed to resume ONLY after the Eagar Police Department Range Master or his designee have reviewed the incident and provided appropriate re-training.