

**WIRELESS COMMUNICATIONS FACILITIES
MASTER LICENSE AGREEMENT**

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 20__ (“Effective Date”), by and between the City of Aurora, Colorado (“City”) and _____, a _____, with its principal office located at _____ (“Company”).

RECITALS

A. The Company owns and/or controls, maintains and operates a wireless and fiber communications network (collectively, the “Network,” as more fully described in Section 1.4 below).

B. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Wireless Communications Facilities in the Public Rights-of-Way (as defined in § 1.10 and § 1.8 below).

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely discretionary.

- 1.1 “Affiliate” means any entity that, directly or indirectly controls, is controlled by, or is under common control with, the Company.
- 1.2 “Applicable Laws” means any statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the City or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.
- 1.3 “FCC” means the Federal Communications Commission.
- 1.4 “Network” or collectively “Networks” means one or more of the wireless and fiber-based communications facilities operated by the Company to serve its wireless carrier customers in the City.
- 1.5 “Owner” means a person with a legal or equitable interest in ownership of real or personal property.
- 1.6 “Person” means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

- 1.7 “Public Property” means any real property owned by the City other than Public Rights-of-Way.
- 1.8 “Public Rights-of-Way” or “PROW” means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel, parkway, or easement now or hereafter held by the City, or dedicated for use by the City, use by the general public, or use compatible with the service or operations of the Wireless Communications Facilities.
- 1.9 “Supplemental Site License” means a document, substantially in the form attached as Exhibit A. Each Wireless Site installation will be subject to a Supplemental Site License.
- 1.10 “Wireless Communications Facility” or “WCF” means a facility used to provide wireless communications services to the public; or wireless backhaul services sold to wireless service providers who in turn provide wireless services to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF includes an antenna or antennas, ancillary equipment, towers, poles and other vertical assets upon which WCFs are installed. “WCF” does not include fiber optic facilities, except to the extent contained on or within the vertical assets.
- 1.11 “Wireless Site” means a location on Public Rights-of-Way selected for the Company’s deployment of Wireless Communications Facilities.

SECTION 2. GRANT OF AUTHORITY

- 2.1 Grant of License. The City hereby grants to the Company, a non-exclusive license to use and occupy the PROW throughout the territorial boundaries of the City, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Wireless Communications Facilities identified in each Supplemental Site License. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Applicable Laws. The Company shall install its WCFs consistent with the City’s applicable ordinances and regulations including, but not limited to those rules and regulations promulgated by the Director of Aurora Water, Director of Public Works, Director of Information Technology and the Director of Parks and Open Space. The parties understand and agree that this Agreement is a limited grant of authority subject in all respects to Applicable Law regarding the kind, size, height and bulk of structures in the PROW, and further subject to all provisions contained herein, including without limitation, Exhibit C.
- 2.2 Installations on Poles. WCFs owned and/or controlled by the Company may be installed only on (i) City’s traffic signal poles or other City-owned poles in the PROW under the terms of this Agreement, (ii) third-party poles under the terms of a fully executed pole attachment agreement with the Owner of such poles, (iii) on street lighting poles approved for street lighting purposes by the City that are purchased by the Company and

assigned to the City, or (iv) in instances where no other reasonable opportunity for attachment exists, on the Company's proprietary poles. The Company shall be responsible for complying with all obligations under this Agreement regarding equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all WCFs shall be installed on poles located at Wireless Sites. For attachments of Wireless Communications Facilities in the PROW on structures owned by the City, in addition to all obligations of this Agreement, the Company shall be bound by the requirements contained in Exhibit B, titled "Attachments to City Facilities."

- 2.3 License Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire fifteen (15) years from the Effective Date (the "Term"), unless renewed as herein provided in Section 7.2. The term of each Supplemental Site License shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site License shall be five (5) years, so that should the Term of this Agreement expire before the end of any five (5) year Supplemental Site License term, this Agreement shall remain in effect only with respect to any Supplemental Site License through the end of such Supplemental Site License's term.
- 2.4 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided, the applicable attachments to this Agreement, and all Applicable Laws.
- 2.5 Non-Exclusive License. The Company's right to use and occupy the PROW and attach to structures therein shall not be exclusive. The City reserves the right to grant a similar use to itself or any Person at any time.
- 2.6 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights it may assert against the City and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause, except as provided in Section 5 and except with respect to claims, demands, causes of action and rights the Company may assert against the City and its officials, personnel, agents, and representatives in connection with their negligence and willful misconduct.
- 2.7 No Interest in Public Property or PROW. Nothing under this Agreement shall be interpreted to create or vest in the Company any easement or other ownership or property interest to any Public Property or PROW or constitute an assignment of any City rights to Public Property or PROW. The Company shall, at all times, be and remain a licensee only.
- 2.8 No Illegal Activity Permitted. The Company shall not use or permit the Wireless Sites or City-owned infrastructure to be used for any activity violating any Applicable Laws.

- 2.9 Sub-Tenants and Sub-Licensees of Company. The parties understand and agree that the Company intends to provide access to the Wireless Sites to its customers through leases, licenses or similar agreements. The Company shall require in its agreements with its customers that its customers agree to be subject to all terms, conditions and obligations of this Agreement as they may relate to the customers' use of the Wireless Sites and that the customers shall further comply with all Applicable Laws.

SECTION 3. PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY

- 3.1 License Requirement/Processing Fees. Each Wireless Site will be subject to a Supplemental Site License pursuant to the terms and conditions of this Agreement, and the Company may terminate any Supplemental Site License for convenience at its discretion, subject to all obligations for removal of Wireless Communications Facilities, restoration of the Wireless Site and any other applicable conditions of law related to such termination. Prior to the execution of this Agreement, the Company shall also submit a certificate of insurance to the City which certificate shall comply with the insurance requirements set forth in this Agreement. The Company shall also submit processing fees to the City for each Supplemental Site License, which fees are non-refundable, are comparable to City fees for similar permits, and may be modified in the future to be consistent with fees then imposed on like activities. The foregoing fees include eight (8) hours of inspection by the City. If the City reasonably requires additional inspection beyond eight (8) hours then Company agrees to pay for such inspections at the rate of \$90.00 per hour or at such rate as may be charged by the City for similar inspections in the future. The Company shall also submit such other information as may be requested by the City.
- 3.2 Permitted Use of PROW. PROW may be used by the Company, seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of WCFs and not for any other purpose. It is understood that the purpose for installing WCFs at designated Wireless Sites in the PROW is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures and fiber backhaul. This Agreement shall include new types of WCFs that may evolve or be adopted using wireless technologies.
- 3.3 Application and Approval of Wireless Sites.

3.3.1. The Company shall file with the City a Supplemental Site License for proposed Wireless Sites for which the Company is seeking administrative approval. A single Supplemental Site License may seek authority for up to ten (10) WCFs under this Agreement. The request must include information on the Owner of the pole upon which the WCF is proposed to be installed, and, where poles are owned by a third party, a letter of authorization from the Owner of the poles confirming that Company has authority to make the requested attachment(s) and such other information as set forth on Exhibit A, which may, in the City's sole discretion, be modified from time to time to meet the needs of the City. If the WCF is proposed in rights-of-way owned by another governmental

entity, a copy of the agreement authorizing the Company access to that right-of-way is also required. Upon filing of a complete request for a Supplemental Site License, the City shall process the request within twenty (20) business days, or within such other time as designated by Applicable Law. Notwithstanding the foregoing, if the Supplemental Site License request seeks permission to install or construct any WCFs that are not subject to administrative approval, the time in which the City shall direct the Company to apply for the necessary land use permission shall be that period permitted under Applicable Law.

3.3.2 For installations, construction, operation, maintenance, and removal of WCFs, the Company shall obtain all generally applicable permits that are required of all occupants of the PROW in accordance with Applicable Law. The City shall process all permit applications in a non-discriminatory and competitively neutral manner.

3.3.3 Upon finding that a request for a Supplemental Site License is complete, the City will determine whether the location (and any existing pole) identified by the Company as a Wireless Site is within the PROW. If it is not, then, except as set forth in Section 3.3.1, the request would be outside the scope of this Agreement.

- 3.4 Modification. Notwithstanding anything in this Agreement to the contrary, modifications shall be subject to permitting required under Applicable Laws, but shall not be subject to additional City approval, to the extent that: (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, change in loading impacts on the pole as approved by the City or impact to multi-modal traffic flow; or (ii) such modification involves replacement of the attachment with an attachment that is the same or smaller in weight and dimensions as the approved attachment and does not impact multi-modal traffic flow.
- 3.5 Utilities. The Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its WCFs. In no event will the Company secure its utilities by sub-metering from the City.
- 3.6 Duty to Minimize Interference. The Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the PROW, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, City-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and City networks, and other telecommunications, utility, or Public Property. All Company activities in the PROW shall be carried on as to minimize interference with the use of the PROW and with the use of private property, in accordance with all regulations of the City necessary to provide for and protect public health, safety and convenience.
- 3.7 Relocations.

3.7.1 The City shall have the right to require the Company and its customers to relocate, remove, replace, modify or disconnect WCFs located in the PROW for public purposes, in the event of an emergency, or when the public health, safety or welfare

requires such change (for example, without limitation, by reason of traffic conditions, public safety, PROW vacation, PROW construction, change or establishment of PROW grade, installation of sewers, drains, electric lines, gas or water pipes, conduits, cables, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Company's expense. The City also reserves the right to make full use of the property involved as may be necessary or convenient, and the City retains all rights to operate, maintain, install, repair, remove, replace or relocate any of its facilities located within the City's property at any time and in such a manner as it deems necessary or convenient. Except during an emergency, the City shall provide reasonable notice to the Company, of not less than sixty (60) days, and allow the Company the opportunity to perform any relocation, removal, replacement, modification or disconnection of the WCFs located in the PROW. Following notice by the City, the Company shall relocate, remove, replace, modify or disconnect any of its WCFs within any PROW. If the City requires the Company to relocate its WCFs located within the PROW, the City shall make a reasonable effort to provide the Company with an alternate location within the PROW. During such relocation, if necessary, in the Company's reasonable determination, and consistent with any applicable permit requirements, it may place a temporary installation in the PROW (e.g. cell-on-wheels).

3.7.2 If the Company fails to complete the relocation within the time prescribed and to the City's satisfaction, the City may remove the WCFs or otherwise cause such work to be done and bill the cost of the work to the Company, including all costs and expenses incurred by the City due to the Company's delay. In such event, the City shall not be liable for any damage to any portion of the Network other than damage caused by the City's negligence or willful misconduct. The Company shall make full payment to the City within thirty (30) days of receipt of an itemized list of such costs.

- 3.8 Duty to Repair. Any PROW, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement, removal, relocation, operation or maintenance of any WCFs by the Company or its agents or contractors shall be promptly repaired by the Company at its sole expense.
- 3.9 Inventory of Wireless Sites. The Company shall maintain a current inventory of Wireless Sites throughout the Term. The Company shall provide to the City a copy of the inventory of Wireless Sites by December 31st of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, date of installation, the Company Site ID #, type of pole used for installation, pole Owner, and description/type of installation for each Wireless Site WCF installation. Concerning Wireless Sites that become inactive, the inventory shall include the same information as active installations in addition to the date the Wireless Site was deactivated and the date the WCF was removed from the PROW. The City will compare the inventory to its records to identify any discrepancies.
- 3.10 Unauthorized Installations. If there are any unauthorized Wireless Sites identified by the City as a result of comparing the inventory of Wireless Sites to internal records or through any other means, the City shall provide written notice to the Company of such unauthorized Wireless Site and the Company shall have thirty (30) days thereafter in

which to submit an application request for a Supplemental Site License for that location, or alternatively to remove the WCFs and restore the property at the Company's expense. If the Company fails to submit a request for a Supplemental Site License, or if the request is denied, the Company shall remove the WCFs from the PROW and restore the property at its expense within thirty (30) days, unless a different time period is agreed to by the parties. If the request is approved, the Company must pay the required fees for a new WCF site plus interest at the rate of two percent (2%) per annum from the date of the original installation.

3.11 Signal Interference Prohibited.

3.11.1 Notice; Company Response. In the event any WCFs interfere with the City's traffic signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, the Company will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined in subsection 3.11.2 below, and shall follow the escalation process outlined in Section 4 of this Agreement.

3.11.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the City Director of Public Works an interference remediation report that includes the following items:

3.11.2.1 Remediation Plan. Devise a remediation plan to stop the event of interference;

3.11.2.2 Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and

3.11.2.3 Additional Information. Include any additional information relevant to the execution of the remediation plan.

3.11.3 Removal; Relocation. In the event interference with City facilities cannot be eliminated, the Company shall shut down the WCFs and pursuant to Section 3.7 remove or relocate any WCF that is the source of the interference to a suitable alternative location.

SECTION 4. EMERGENCY CONTACTS

4.1 Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the City will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The City will make every reasonable effort to coordinate its emergency response with the Company. To that end, the City will use the following emergency contacts:

4.1.1 Level One Contact: The Company's network operations center may be reached 24/7 at: _____ and email: _____.

4.1.2 Level Two Contact: In the event the Company's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the City may contact:

_____ [NAME], _____ [TITLE]; Phone: _____; Email:
_____. ***

4.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the Director of Public Works.

4.3 Company's Response to Network Emergency. In case of a Network emergency due to any unforeseen event, the Company may access its Wireless Sites and WCFs without first obtaining a PROW permit provided the Company has conducted Network troubleshooting and diagnostic tests and has reasonably identified the point or points of Network failure or malfunction. While acting under this provision to address a Network emergency, the Company shall conduct its activities within the PROW in such a manner as to protect public and private property and to provide the necessary traffic control. The Company will make every reasonable effort to coordinate its emergency response with the City. To that end, prior to entering the PROW, the Company will use the following emergency contacts to give notice to the City of the Network emergency and an estimated time period to address the situation:

The City's public safety communications dispatch may be reached 24/7 at:
_____ and electronically at _____.

If contact cannot be made with the City in this manner the Company shall call 9-1-1.

4.4 City's Duty to Maintain Emergency Contacts. The City shall maintain the emergency contact information current at all times with Company's network operations contact.

SECTION 5. INDEMNITY AND INSURANCE

5.1 Indemnity

5.1.1 The Company shall indemnify, defend and hold the City, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the WCFs, any of its or its customers' activities on any Wireless Site, or the Company's breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the City or an Indemnified Party.

5.1.2 The City shall give the Company timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any WCFs. In the event such claim arises, the City or any other Indemnified Party shall tender the defense thereof to the Company and the Company shall

consult and cooperate with the City Attorney's Office while conducting its defense. The City shall cooperate fully therein with Company's legal representative and shall be consulted on any settlements of claims prior the execution of any settlement agreements.

- 5.1.3. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Company to represent the City, the Company shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the City shall select its own counsel and any other experts or consultants, subject to the Company's prior approval. The City's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Company.
- 5.1.4 Neither party will be liable under this Agreement for consequential, indirect, special, incidental or punitive damages for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

5.2 Insurance.

- 5.2.1 The Company and its subcontractors shall carry during the Term, at their own cost and expense, the following insurance: (i) commercial general liability insurance with a minimum limit of liability of \$2,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of not less than \$2,000,000; (iii) Workers' Compensation Insurance as required by law; and (iv) employers' liability insurance with minimum limits of \$500,000 bodily injury each accident, \$500,000 bodily injury each disease, and \$500,000 bodily injury disease aggregate. Notwithstanding the foregoing, the City may increase the aforementioned minimum limits of insurance at any time in its sole discretion.
- 5.2.2 All of the insurance coverages identified in Section 5.2.1, except the workers' compensation insurance, shall apply to and name the City as an additional insured, and shall provide a defense and indemnification to the City regardless of the City's fault or wrongdoing. The insurance shall indemnify and defend the City against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the City's benefit. Further,

the insurance coverages identified in Section 5.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City.

- 5.2.3 Upon execution of this Agreement and upon any subsequent request of the City, the Company shall provide the City with a Certificate of Insurance and any endorsements or copies of policies determined by the City to be necessary to provide evidence of the coverage required by this Section 5.2.
- 5.2.4 The Company shall provide thirty (30) days advance notice to the City in the event of cancellation of any coverage or modification of any coverage such that it is no longer compliant with this Section 5.2.
- 5.2.5 All of the primary insurance policies Company and its subcontractors are required to maintain in this Section 5.2 shall be obtained from insurance carriers having an A.M Best rating of at least A-X and each excess insurance policy shall be obtained from an insurance carrier having an A.M. Best rating of at least A-VIII.

SECTION 6. DEFAULT AND REMEDIES

- 6.1 Notice of Violation. The City shall provide the Company with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which the Company may: (i) demonstrate that a violation does not exist, (ii) cure the alleged violation, or (iii) if the nature of the alleged violation prevents correction thereof within thirty (30) days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the City of such plan of action.
- 6.2 Default. If the Company fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in thirty (30) days and the Company has failed to initiate a reasonable plan of corrective action and to correct the violation within the specified time frame, then the City may declare in writing that the Company is in default.
- 6.3 Bankruptcy. The parties expressly agree and acknowledge that it is their intent that in the event the Company shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person to which the Company's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the City an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such

assignment shall be paid to the City, shall be the exclusive property of the City, and shall not constitute property of the Company or of the estate of the Company within the meaning of the Code. Any monies or other considerations constituting the City's property under the preceding sentence not paid or delivered to the City shall be held in trust for the benefit of the City and be promptly paid to the City.

- 6.4 Hearing Available to Company. Within fifteen (15) days after receipt of a written declaration of default from the City, the Company may make a written request for a hearing before the City Council or its designee, in a public proceeding affording due process. If a hearing is not requested, the City may seek any remedy available under Applicable Law. If a hearing is requested, such hearing shall be held within sixty (60) days of the receipt of the request therefor and a decision rendered within fifteen (15) days after the conclusion of the hearing. Upon a finding of default, the City Council or its designee may impose remedies of revocation and/or recovery of actual damages caused by such breach. Any decision shall be in writing and shall be based upon written findings of fact as contained in the record of the hearing.
- 6.5 Appeal of Default. The Company may appeal a finding of default and/or imposition of remedies by the City Council or its designee, which appeal shall be pursuant to C.R.C.P. 106 and based upon the written record. Alternatively, the parties may, by mutual agreement, agree to address the finding of default through arbitration or mediation.

SECTION 7. AMENDMENT AND RENEWAL

- 7.1 Amendment. Written requests to amend this Agreement for any purposes may be made by either party. The parties shall engage in good faith discussions and endeavor to reach agreement within sixty (60) days of receipt of such written request. Any amendment shall become effective after being duly executed by both parties. Notwithstanding the foregoing, nothing shall require either party to agree to any amendment request.
- 7.2 Renewal.
- 7.2.1 Unless earlier terminated by either party pursuant to the provisions of this Agreement, the Company may request a renewal of this Agreement, by providing six (6) months written notice of the intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for one (1) successive term of five (5) years, provided that the Company has complied with the material terms of this Agreement. If the City does not believe that the Company is entitled to renewal as requested, the City shall provide written notification to the Company at least ninety (90) days prior to the expiration date of this Agreement, in which notice the City shall provide support for its position.
- 7.2.2 As between the City and the Company, the Company shall at all times retain ownership of the WCFs, unless an alternative vertical structure, such as a street light, has been purchased by the Company and ownership assigned to the City, pursuant to this Agreement. Upon expiration or non-renewal of this Agreement,

within forty-five (45) days of the expiration of the then-current Term, the Company shall be permitted to remove its WCFs installed within the PROW, or alternatively, sell the same to a qualified buyer consistent with Applicable Law. In no event may Company abandon in place any of its WCFs installed in or on the PROW, unless written consent of the City is obtained.

SECTION 8. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL

8.1 Definitions. In this Section, the following words have the meanings indicated:

8.1.1 “Control” means actual working control in whatever manner exercised. “Control” includes, but may not necessarily require, majority stock ownership or control of 51% or more of the voting rights in the Company.

8.1.2 “Proposed Transferee” means a proposed purchaser, transferee, lessee, assignee or Person acquiring ownership or control of this Agreement or of the Company.

8.2 No Transfer. The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, any Supplemental Site License as provided for herein, or any of the rights or privileges therein granted, without the prior consent of the City, except that such consent shall not be required for a transfer or assignment to an Affiliate. The consent required by the City may be conditioned upon the performance of those requirements necessary to ensure compliance with the obligations of this Agreement. The Company shall provide no less than thirty (30) days written notice to the City of the details of any transaction described herein that requires City consent. Once the Company obtains City consent to transfer or assign this Agreement to a third party as required under this Section 8.2, the Company shall be authorized to transfer each Supplemental Site License to such third party without further consent or approval. Notwithstanding anything to the contrary in this Section 8.2, no City consent is required for transfers to non-Affiliates that are currently operating in the City and are in full compliance with all obligations to the City. The Company shall provide no less than thirty (30) days written notice to the City of a transaction covered in this Section 8.2 to a non-Affiliate that it believes is compliant with its obligations to the City.

8.3 Company Control. The requirements of Section 8.2 shall also apply to any change in Control of the Company. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of the Company. The consent required (other than with respect to Affiliates and non-Affiliates that are currently operating in the City and are in full compliance with all obligations to the City) may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon the Company by the City. For the purpose of determining whether it should consent to transfer of Control, the City may inquire into the qualifications of the proposed transferee and the Company shall assist the City in the inquiry.

- 8.4 Required Information. In seeking the City’s consent to any change in ownership or control for which prior consent is required under Sections 8.2 and 8.3, the Company shall require the proposed transferee to indicate whether it:
- 8.4.1 Has ever been convicted or held liable for acts involving deceit including any violation of Applicable Laws, or is currently under an indictment, investigation or complaint charging such acts;
 - 8.4.2 Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;
 - 8.4.3 Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a network and/or equipment similar to that contemplated by this Agreement, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;
 - 8.4.4 Is financially solvent by submitting financial data including financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation along with any other data that the City may reasonably require; and
 - 8.4.5 Has the financial and technical capability to enable it to maintain and operate the Network and Wireless Sites and WCFs for the remainder of the Term.
- 8.5 Company’s Compliance with Terms. In seeking the City’s consent to any change in ownership or control, the Company shall indicate whether it has failed to comply with any material provision of this Agreement at any point during the term of this Agreement.
- 8.6 No Waiver. The consent or approval of the City to transfer by the Company does not constitute a waiver or release of the rights of the City in or to its PROW and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.
- 8.7 Agreement Binding. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.
- 8.8 Pledge of Assets. Notwithstanding anything contained in this Agreement, the Company may pledge the assets of the Network and WCFs for the purpose of financing provided that such pledge of assets shall not impair the Company or mitigate the Company’s responsibility and capability to meet all its obligations under the provisions of this Agreement.
- 8.9 **[NOTE: THIS SECTION APPLIES ONLY TO COMPANIES THAT ARE INFRASTRUCTURE OWNERS AND NOT SERVICE PROVIDERS. IF THE COMPANY IS A SERVICE PROVIDER, THIS SECTION SHOULD BE DELETED AND STATE “THIS SECTION HAS BEEN DELETED”.]** The City and the Company agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain WCFs deployed by Company in the PROW pursuant to this Agreement may be

owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such WCFs shall be treated as Company's WCFs for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such WCFs; (ii) City's sole point of contact regarding such WCFs shall be the Company; and (iii) Company shall have the right to remove and relocate the WCFs. Such Wireless Communications Facilities are subject to Applicable Law, and the Company shall indemnify the City and hold it harmless from any claims from Carriers related to any action taken by the City with respect to the facilities in accordance with Applicable Law. Should the Company's agreement(s) with any Carriers related to any WCFs cease, the Company shall provide the City with notice of such termination and contact information for the owners of the WCFs at least ten (10) business days prior to such termination.

SECTION 9. MISCELLANEOUS

9.1 Severability. If any Applicable Law renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.

9.2 Force Majeure. The Company shall not be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the Company's control, provided the Company took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to the City.

9.3 No Waiver.

9.3.1 The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

9.3.2 Both the City and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the City nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

9.4 Attorney Fees. Should any dispute arising out of this Agreement lead to arbitration or litigation, the prevailing party shall be entitled to recover its costs of suit, including (without limitation) reasonable attorneys' fees.

9.5 Change of Law. If any Applicable Law that governs any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change preempts compliance with or the enforcement of any aspect of such rights or obligations, then the parties agree to promptly amend the Agreement as reasonably

required to accommodate and/or ensure compliance with any such legal or regulatory change.

9.6 Notice. All notices that shall or may be given pursuant to this Agreement must be in writing and delivered by hand or (i) through the United States mail, by registered or certified mail; (ii) by prepaid overnight delivery service; or (iii) by email transmission. If a hard copy of the same is delivered through the U. S. Postal Service or by overnight delivery service, it shall be delivered to the following addresses:

if to City:

City of Aurora, Colorado

ATTN: _____

with a copy to:

City of Aurora, Colorado

ATTN: City Attorney

if to Company:

Attention: _____

with a copy to:

Attention: _____

Each party shall provide timely notice to the other of changes in the address for notification under this provision. Notice shall be deemed effective upon receipt in the case of hand delivery, three days after delivery to the U.S. Postal Service, or the next business day if delivery is effectuated by email or overnight delivery service.

9.7 Representations and Warranties. Each party to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform its respective obligations hereunder and that such obligations shall be binding upon it

without the requirement of the approval or consent of any other person or entity in connection herewith.

- 9.8 Amendment. This Agreement may not be amended except pursuant to a written instrument signed by both parties.
- 9.9 Other PROW Users. The parties understand and agree that the City permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the City shall not be liable to Company for any damage caused by those persons or entities.
- 9.10 Entire Agreement. This Agreement and all attachments hereto (including Supplemental Site Licenses) represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.
- 9.11 Laws Governing/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in Arapahoe County, Colorado.
- 9.12 No Third-Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 9.13 Counterparts; Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.
- 9.14 Public Disclosure. The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-202(6), and accordingly may be disclosed to the public.

9.15 Consents. To the extent either party is required hereunder to obtain the consent or approval of the other under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

CITY OF AURORA, COLORADO:

By: _____
Name: _____
Its: _____

COMPANY: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

Supplemental Site License

This Supplemental Site License, made this ____ day of _____, 20__ (“Effective Date”) between the City of Aurora, hereinafter designated “Licensor,” and _____, hereinafter designated “Licensee”:

1. Supplemental Site License. This is a Supplemental Site License as referenced in that certain Master License Agreement for the use of Public Rights-of-Way in connection with the operation of Licensee’s Network, between Licensor and Licensee dated _____, 20__ (the “Agreement”). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. Project Description and Locations. As described herein, Licensee shall have the right to use the City structure, other vertical structure owned by a third party or a newly constructed vertical structure for WCF at the designated areas in the PROW as further described in Attachment 1, Table 1 attached hereto (the “Licensed Area”).
3. WCF Equipment. The WCFs to be installed at the Licensed Area are described in Attachment 1, Table 2 attached hereto.
4. Term. The term of this Supplemental Site License shall be as set forth in Section 2.3 of the Agreement.
5. Fees. If this Supplemental Site License is for attaching WCFs to City-owned structures in the PROW, the initial annual attachment fee shall be \$200.00 (“Attachment Fee”). Such annual Attachment Fee shall not be applicable to street lighting poles approved for street lighting purposes by the City, purchased by the Company and assigned to the City pursuant to Section 2.2(iii).
6. Commencement Date. The commencement date of this Supplemental Site License is the first day of the month following the date Licensee has commenced installation of its WCFs at the Licensed Area.
7. Approvals. It is understood and agreed the Licensee’s ability to use the Licensed Area is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the “Governmental Approvals”) that may be required by any Federal, State or Local authorities. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Licensee

determines one or more licensed Sites in the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate all or part of this Supplemental Site License. Notice of Licensee's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee. All fees paid to said termination date shall be retained by Licensor. Upon such termination, all or part of this Supplemental Site License, as applicable shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the Agreement. Otherwise, Licensee shall have no further obligations for the payment of any Attachment Fee to Licensor.

[Signature page follows]

[Signature page for Supplemental Site License.]

EXECUTED to be effective as of the date shown above.

LICENSOR:

By: Director of Public Works

Name: _____

Title: _____

APPROVED AS TO FORM

BY: _____
Assistant City Attorney

LICENSEE:

By: _____

Print Name: _____

Its: _____

Attachments:

Attachment 1

LICENSEE SHALL PROVIDE THE FOLLOWING AS IS APPLICABLE TO BE CONSIDERED BY LICENSOR IN WHETHER TO GRANT THE SUPPLEMENTAL SITE LICENSE:

- Plot plan, engineering design, and specifications for installation of the Wireless Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance.
 - The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements.
- For City poles, include documentation from the City verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of the Wireless Communication Facility. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.
- For new pole installations, include documentation verifying the pole location is in the PROW and is eligible for installation. Include list of adjacent property owners. If the proposed installation includes a new pole, provide design and specification drawings for the new pole.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
- The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- A typewritten legal description with (1) the Section, Township and Range, and County being affected, and if it is part of a subdivision, it shall be stated also; (2) the Point of Beginning to an established land corner or to a subdivision plat that is tied to an established land corner, with curves showing radius, delta, arc length and angle to radius point if curve is non-tangent, and area to be included in square feet; and (3) the legal description SIGNED and SEALED by a surveyor registered in the state of Colorado.
- For City-owned poles, provide information required by Exhibit B of the Agreement.

EXHIBIT B

ATTACHMENTS TO CITY FACILITIES

Traffic Signal Pole Requirements

Traffic signal poles already supporting Police equipment are not eligible to be considered for licensee equipment placement. Licensee equipment placed on traffic signal poles may be required to be relocated at any time if the City infrastructure is needed for placement of Police equipment.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading will require an engineering analysis stamped by a Colorado licensed professional engineer.

Installations on signal poles cannot alter the poles in any way. Therefore, all attachments must be banded. Drilling and taping is not allowed.

All cabling must be external to the pole to eliminate the possibility of interference with existing signal cables and conductors.

Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required and will be reviewed on a case-by-case basis.

Analysis must be provided to show the proposed equipment will not interfere with the City's wireless network operating in the 900 MHz and 5.8 GHz frequencies.

For installations on traffic signal poles, involved personnel must hold at least a Level I IMSA Traffic Signal certification (level II preferred) to demonstrate comprehension of the implications of any negative impacts to the City's traffic signal infrastructure.

Any installation or servicing of equipment located on traffic signal poles shall be coordinated with the City's Traffic Operations and Traffic Engineering groups a minimum of three business days in advance.

Equipment located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Company due to any work performed by or authorized by the City.

EXHIBIT C

TECHNICAL REQUIREMENTS

1. This Exhibit C sets forth additional technical requirements as a supplement to the Agreement between City and Company. Terms not defined herein shall have the definitions set forth in the Agreement to which this Exhibit C is attached.
2. Irrespective of Company's rights, if any, under 47 U.S.C. § 1455(a) (codifying Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012) and the FCC's implementing regulations thereunder, including 47 C.F.R. § 1.40001, Company shall not,
 - (i) unless otherwise agreed to by the parties in a Supplemental Site License and (ii) unless the Company obtains any additional, required permitting and land use approval in accordance with Applicable Law:
 - a. install a pole in the PROW with a height in excess of thirty (30) feet;
 - b. increase or seek to increase the height of any pole in the PROW to a total height in excess of thirty (30) feet, except that the Company may increase the height of a distribution pole by up to an additional five (5) feet to the extent required by Applicable Law or industry standards for the placement of WCFs on the top of a distribution pole; or
 - c. install at ground level equipment shelters or cabinets or electrical distribution panels, except, in each case after all reasonable alternative pole locations and underground locations have been explored and found unavailable or lacking in some substantial way.

The City shall weigh requests by Company to include any of the foregoing in a Supplemental Site License in light of the City's historic preservation policies, aesthetic considerations, pedestrian, disabled person and/or bicyclist access to sidewalks, public safety concerns, technical installation conflicts, and compliance with Applicable Law.

3. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular facilities in the PROW, nor the installation of macro wireless towers or poles intended for macro facilities.
4. Wireless Sites shall be installed within the footprint of an area of no more than thirty-six (36) square feet.