

**AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND [REDACTED] FOR
THE USE OF LICENSOR PROPERTY IN CONNECTION WITH THE OPERATION OF A
WIRELESS NETWORK**

This Agreement is made and entered into by and between the City of Colorado Springs, a home rule city and Colorado municipal corporation, including its enterprise, Colorado Spring Utilities (together, the “Licensor”), and [REDACTED] (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals:

A. Licensor is a home rule city, as provided for in Article XX, § 6 of the Colorado Constitution.

B. For purposes of this Agreement, the term “Licensor” includes the City of Colorado Springs (“City”) and Colorado Springs Utilities (“CSU”), which entities are referred to in this Agreement individually as required.

C. Licensor is the owner of rights-of-way, streets, utility easements and similar property rights, as well as certain Municipal Facilities (as defined more fully in Section 1.1(j) below) located in the public rights-of-way situated within the city limits of Colorado Springs, Colorado (“ROW” as defined more fully in Section 1.1(r) below).

D. Licensee is duly organized and existing under the laws of the State of [REDACTED] and Licensee and its lawful successors, assigns, and transferees are authorized to conduct business in the State of Colorado.

E. Licensee owns and/or controls, maintains, and operates a wireless communications network serving [REDACTED] customers (collectively, the “Network,” as more fully described in Section 1.1(k) below).

F. For purposes of operating the Network, the Licensee wishes to locate, place attach, install, operate, control, and maintain antennas and other related wireless communication equipment consistent with small cell technology (“Equipment” as defined more fully in Section 1.1(d) below) in the ROW or on Municipal Facilities.

G. Licensee will agree to comply with Licensor’s ROW, land use requirements, and service standards and specifications as provided herein.

H. Licensee is willing to compensate Licensor in exchange for a grant and right to use and physically occupy portions of Municipal Facilities and/or the ROW as provided herein.

AGREEMENT

1. Definitions and Exhibits.

1.1 Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and 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. This Section also includes the definitions as set forth in the Colorado Springs Municipal Code, including the Colorado Springs Land Development Code.

(a) Agreement means this Agreement for the Use of Licensor Property in connection with the Operation of a Wireless Network.

(b) Colorado Springs Municipal Code means the Code of the City of Colorado Springs 2001, as amended, and any regulations and policies promulgated thereunder, including the most current version of CSU’s Electric Line Extension and Service Standards.

(c) City means the City of Colorado Springs, Colorado.

(d) Equipment means Small Cell antennas and other Small Cell Facilities that are specifically identified, described, and approved by the Licensor as set forth in Exhibit A-1 attached to each Supplemental Site License (as defined below) and includes, but is not limited to, nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes, a pole, and associated and appurtenant equipment on the pole or on the ground deemed by Licensee necessary to operate the Wireless Site and uses intended thereto. Equipment specifically excludes wired backhaul infrastructure which may require additional licenses or permits in order to occupy the Rights-of-Way.

(e) Facilities means street light poles, traffic poles, and electric distribution and other utility poles located within the ROW.

(f) FCC means the Federal Communications Commission.

(g) Hazardous Substance means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

(h) Interference means physical interference and radio frequency interference.

(i) Laws means any and all applicable federal, state, and local laws, statutes, constitutions, code, City of Colorado Springs Home Rule Charter, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity, agency 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.

(j) Municipal Facility/Facilities means those City-owned Facilities and CSU-owned Facilities (i.e., Licensor-owned) located within the ROW that are designated or approved by City and/or CSU as being suitable for placement of Equipment.

(k) Network means one or more of the WCFs operated by Licensee to serve its wireless carrier customers in the City.

(l) Owner means a person with a legal or equitable interest in ownership of real or personal property.

(m) Permit means a permit issued and described in accordance with Laws, which is used to regulate, monitor, and control the improvement, construction, or excavation activities, or other work or activity, occurring upon or otherwise affecting Licensor’s ROW, including ROW use, building, and electrical permits.

(n) Person means any corporation, limited liability company, partnership, proprietorship, individual, or organization, governmental organization, or any natural person.

(o) Physical Interference means where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sight path.

(p) Pole Attachment Fee means that fee described in Section 4.1 of this Agreement.

(q) Radio Frequency Interference means the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

(r) Rights-of-Way or ROW means the surface of and the space above and below the public roads, streets, highways, freeways, lanes, public way, alleys, courts, sidewalks, boulevards, parkways, drives, bridges, tunnels, and public utility easements, now or hereafter held by Licensor, or dedicated for use by Licensor, for use by the general public, or for use compatible with the operations of the Equipment, but excluding side and rear lot platted easements on residentially zoned lots.

(s) Supplemental Site License means the form of the license granted by this Agreement, described in Section 3 below, and shown on **Exhibit A**.

(t) Small Cell Facility means a WCF that meets both of the following qualifications: (1) A wireless communication facility where each antenna is located inside an enclosure of no more than three cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements that could fit within an imaginary enclosure of no more than three cubic feet; and (2) primary equipment enclosures are not larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. All associated equipment, even if located outside of the primary equipment enclosure, shall be included within the definition of Small Cell Facility.

(u) Term means the Initial Term and any Renewal Terms, as described in Section 3.1 of this Agreement.

(v) Wireless Communications Facility (also a "WCF") means the same as a Wireless Communications Facility or WCF as defined in the Colorado Springs Land Development Code.

(w) Wireless Site means a location on ROW selected for the Licensee's deployment of its Equipment.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

(a) **Exhibit A: Supplemental Site License**

Exhibit A-1: Licensee Plans, Licensed Area, and Description of Facilities/Equipment to be Installed as Approved by Licensor

Exhibit A-2: Special Provisions Applicable to CSU-owned streetlight poles

Exhibit A-3: Special Provisions Applicable to City Traffic Signal Facilities

Exhibit A-4: Special Provisions Applicable to CSU-owned electric distribution poles

- (b) **Exhibit B:** Operational and Design Criteria
- (c) **Exhibit C:** Licensee's Minimum Limits of Insurance

In the event of any conflict between this Agreement, including the Exhibits, and the Colorado Springs Municipal Code, the Colorado Springs Municipal Code prevails, except as federal or state law may preempt or act to modify the Colorado Springs Municipal Code at present or in the future. Future amendments to the Colorado Springs Municipal Code shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, except as federal or state law may preempt or act to modify the City Municipal Code.

2. Grant of License and Terms.

2.1. License. Licensors hereby grants to the Licensee, a non-exclusive license to use and occupy the ROW throughout Licensors's territorial boundaries, subject to the site approval provisions herein, 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 Equipment at each approved Wireless Site. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Laws. Licensee shall install its Equipment consistent with Laws. No license is granted for the use of any property that is not Rights-of-Way, such as park land, building walls or rooftops, or macro radio or communications towers.

2.2. Priority. Licensee's Equipment may be attached to Facilities in the ROW with the following order of priority, to the extent technically feasible and except as set forth below or as agreed between the Parties:

- (i) CSU-owned streetlight poles, pursuant to a fully executed Supplemental Site License and special provisions; then
- (ii) City-owned traffic signal poles, pursuant to a fully executed Supplemental Site License and special provisions; then
- (iii) Third-party poles pursuant to a fully executed Supplemental Site License and the written terms required by the Owner of such poles; then
- (iv) CSU-owned electric distribution poles, pursuant to a fully executed Supplemental Site License; and then
- (v) To the extent permitted by and in conformance with, City regulations and ordinances, on the Licensee's proprietary poles pursuant to a fully executed Supplemental Site License.

Parties shall mutually exercise good faith efforts to agree on attachments to Facilities, provided that any Municipal Facilities, as may be improved or replaced, are simultaneously functional for the operation of Licensee's Network and for their original municipal function. Considerations for the locations of Equipment shall be governed by the City's traditional role in protecting the health, safety and welfare of the City, including without limitation, compliance with the City's Design Standards and CSU's Electric Line Extension and Service Standards.

2.3. Approval Process. Licensee shall not establish a Wireless Site in the ROW unless and until an application has been submitted to, and approved by, the Licensors, as evidenced by the issuance of a

Supplemental Site License. The Parties agree that the application and approval process for the Equipment referred to in Sections 2.1 and 2.2 shall be conducted pursuant to the Colorado Springs Municipal Code, including the Colorado Springs Land Development Code and the CSU Line Extension and Service Standards and this Agreement; provided, an application for collocation on a Municipal Facility and an application for attachment of Small Cell Facility on a new structure shall be reviewed within 90-days. In order to recover the costs of permitting Wireless Sites in the ROW, including the need to act upon multiple Wireless Sites within the time period prescribed by Law, Licensor may charge application fees in accordance with the City Municipal Code, which may include provisions to limit the number of batched applications to ten (10) per month in order to address legitimate Licensor staffing issues; provided that Licensee may submit more than ten (10) applications per month but may also be required to pay, as part of the application fee, an additional charge to cover Licensor's costs that exceed those typically associated with processing applications, so long as the additional fees are a reasonable approximation of Licensor's reasonable costs and the charges are non-discriminatory. Notwithstanding the foregoing, prior to incurring any additional costs Licensor shall notify Licensee within ten (10) days of its receipt of the applications and Licensee shall have an opportunity to amend or withdraw its applications to alleviate the additional costs. If Licensee elects to proceed after its receipt of notice from the Licensor, the additional charge shall be passed through to Licensee, and Licensee shall pay all such fees within thirty (30) days of receipt of an invoice.

2.4. Modifications.

(a) Minor Modifications. Notwithstanding anything in the Agreement to the contrary, modifications to the Equipment with like-kind or similar Equipment shall be subject to permitting required under Laws, but shall not be subject to written approval of the Licensor under the Colorado Springs Municipal Code including the Colorado Springs Land Development Code. If review is not required by the Colorado Springs Municipal Code, then Licensee may make modifications that otherwise comply with the terms of this Agreement without further review, provided that: (i) such modification to the Equipment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the Equipment, or loading impacts on the pole as approved by Licensor or impact multi-modal traffic flow; or (ii) such modification involves replacement of the Equipment with Equipment that is the same, or smaller in weight and dimensions as the approved Equipment and does not impact multi-modal traffic flow (each of the foregoing, a "Minor Modification").

(b) Substantial Modification. Any modification which does not meet the requirements of a Minor Modification as defined in 2.4(a) above shall be considered a Substantial Modification. Whenever a pole is replaced on a non-emergency basis, such a modification shall be considered a Substantial Modification. For all Substantial Modifications, Licensee shall first submit an application as required by Section 2.3. In addition to any other submittal requirements, Licensee shall provide "load" (structural) calculations for all Facilities upon which it intends to modify Equipment in the ROW.

2.5. Permitted Use of ROW. ROW may be used by the Licensee seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and installation, use and operation of Equipment, and not for any other purpose. Licensee shall, at its expense, comply with all Laws in connection with the use, installation, operation, maintenance, and replacement of Equipment in the ROW, including without limitation, obtaining the necessary Permits, traffic control plan approvals, or street occupancy fees for any work within the ROW by the Licensee and allowable work hours under the Colorado Springs Municipal Code.

2.6. Inventory of Wireless Sites. Licensee shall maintain a current inventory of Wireless Sites governed by this Agreement throughout the Term. Licensee shall provide to Licensor, at Licensor's reasonable request, a copy of the inventory of Wireless Sites governed by this Agreement within 60 days

of such request. The inventory shall include GIS coordinates, License Site ID #, type of pole used for installation, location of Equipment on the pole, pole Owner, and designation/type of installation for each Wireless Site Equipment installation within the ROW. Licensor will compare the inventory to its records to identify any discrepancies. Licensor's request for a current inventory shall be limited to no more than one time per calendar year throughout the Term; either City or CSU has the authority to make this request.

2.7. Equipment to be Installed on Third-Party Poles. Licensee may install its Equipment on other poles in the ROW lawfully owned and operated by third parties, subject to obtaining the written permission of the Owner(s) of the affected property, and obtaining any required Permits including, but not limited to, building or electrical Permits (and paying associated Permit fees). In such situation, Licensee shall submit an application for a Supplemental Site License. Licensee will obtain all required Permits and approvals for installation on third party Facilities pursuant to the City Municipal Code and, if applicable, CSU's Line Extension and Service Standards. Licensor hereby authorizes and permits Licensee to enter upon the ROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on poles or other structures lawfully owned and operated by public utility companies or other property Owners located within the ROW as may be permitted by the public utility company or property Owner, as the case may be. In such situation, a Supplemental Site License shall be required but a Pole Attachment Fee shall not be paid.

2.8. Unauthorized Installations. Any WCF or Equipment owned or operated by the Licensee or an affiliate of the Licensee which WCF or Equipment is not authorized in accordance with Laws shall constitute a material breach of this Agreement. Upon discovery of any unauthorized WCF or Equipment and upon notice by the Licensor, the Licensee shall immediately and without undue delay decommission or otherwise render the WCF or Equipment inoperable and the Licensee shall remove the unauthorized WCF or Equipment within thirty (30) days of such notice by the Licensor; provided, however, upon written request of the Licensee to the Licensor and with the discretionary consent of the Licensor, the Licensor may stay or toll the required removal of the unauthorized WCF or Equipment in order that the Licensee may apply for approval of the WCF or Equipment in accordance with Laws. In the event that the Licensee elects to apply for approval of the unauthorized WCF or Equipment in accordance with this Section, any application for approval shall be processed as if the WCF or Equipment was never established and there shall be no presumption or assumption that the location of the WCF or Equipment is acceptable, appropriate, or necessary to the Licensee's Network due to its prior existence or prior operation. In the event that the Licensee's application for approval of unauthorized WCF or Equipment is denied, Licensee shall remove the WCF or Equipment within thirty (30) days of the date of the Licensor's denial of the application. For any unauthorized WCF or Equipment, Licensee must pay all required fees for a new Wireless Site, plus interest at the rate of eight percent (8%) per annum on the required fees from the date of the original installation. Nothing in this Agreement shall prevent Licensor from imposing or seeking any penalties or remedies provided for under Law or in equity.

3. Term of Agreement, Supplements, Cancellation, Termination, Removal or Abandonment at Expiration.

3.1. Agreement Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire fifteen (15) years from the Effective Date (the "Initial Term") unless renewed herein as provided in Section 3.2. The term of each Supplemental Site License shall be concurrent with the Initial Term of this Agreement and the Renewal Term (as defined in Section 3.2) (the "Supplement Site License Term"); provided, however that the minimum Supplemental Site License Term 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 Term.

3.2. Renewal. Unless earlier terminated by either party pursuant to the provisions of this Agreement or by Licensee by delivering written notice of termination at least nine (9) months prior to the end of the then current term, this Agreement shall automatically renew on the same terms and conditions as herein for one (1) successive term of five (5) years (the “Renewal Term”), provided that the Licensee has complied with the material terms of this Agreement. If the Licensor does not believe that the Licensee is entitled to renewal, the Licensor shall provide written notification to the Licensee at least six (6) months prior to the expiration date of this Agreement, in which notice the Licensor shall provide support for its position. As between the Licensor and the Licensee, the Licensee shall at all times retain control of the Small Cell Facilities. Upon expiration or non-renewal of this Agreement (or Supplement Site License Term, if later than the expiration or non-renewal of the Agreement), within ninety (90) days of the expiration of the then-current term, the Licensee shall be permitted to remove its Small Cell Facilities installed within the ROW, or alternatively, sell the same to a qualified buyer consistent with Laws.

3.3. Licensee Cancellation. Licensee may cancel this Agreement or any Supplemental Site License before the date of expiration by providing Licensor with ninety (90) days express written notice of cancellation. Any previously paid Pole Attachment Fee shall be retained by Licensor. This Agreement and all Supplemental Site Licenses may only be cancelled or terminated as provided in this Agreement or any Supplemental Site License.

3.4. Holdover. If Licensee holds over after the expiration or any earlier termination of this Agreement or any Supplemental Site License (if the Supplement Site License Term extends beyond the Term), then Licensee shall pay to Licensor a holdover fee of 150% of the then current fee per Wireless Site subject to the holdover. If this Agreement or any Supplemental Site License is terminated prior to the end of its Term or Renewal Term, and Licensee removes all of its Equipment from the affected Wireless Site(s) and repairs all damage within thirty (30) days, the holdover fee shall be waived for such Wireless Site(s).

3.5. Abandonment. If Licensee abandons the use of a Municipal Facility or a Licensee-owned Facility location or any of its Equipment located on third-party structures in the ROW for a period of three (3) or more consecutive months, Licensee shall remove its Equipment. In the event Licensee is unable or refuses to remove such Equipment when requested by Licensor, Licensor may authorize removal and Licensee shall be responsible for all costs incurred for such removal. In no event may Licensee abandon in place any of its Equipment installed in or on the ROW, unless written consent of the Licensor is obtained. As an alternative to abandonment of a Licensee-owned Facility, upon mutual agreement of the Parties, Licensee may transfer ownership of any pole or other structure to the Licensor at no cost.

4. Fees and Charges. Licensee shall be solely responsible for the payment of all fees and charges in connection with Licensee’s performance under this Agreement, including those set forth as follows:

4.1. Pole Attachment Fee.

(a) Annual Fee. As of the Commencement Date defined in each Supplemental Site License, Licensee shall pay to Licensor an annual fee equal to Two Hundred Thirty-Five Dollars (\$235.00) for each Supplemental Site License where Licensee is attaching to a Municipal Facility. Beginning on the first anniversary of the Commencement Date and continuing throughout the Term, the annual fee due hereunder shall increase on January 1 of each year of the Term commencing on January 1, 2021 by 2% per annum over the annual fee due during the immediate preceding year. The annual fee, plus any escalator, shall be the “Pole Attachment Fee.” If during the Term, a federal legislation, regulation or rule is passed or adopted, or a court of competent jurisdiction issues a final, non-appealable order (collectively, the “Contingent Event”), that overturns, vacates, or makes non-controlling the Declaratory Ruling issued by the Federal Communications Commission on September 27, 2018 in WT Docket Nos. 17-79 and 17-

84 (FCC 18-133, 33 FCC Rcd 9088) (“Wireless Infrastructure Order”), the Initial Pole Attachment Fee shall be replaced, upon such legislation, regulation or rule becoming effective or upon such order becoming final, by a revised Pole Attachment Fee equal to \$1,000 per year subject to the 2% per annum increase set forth above (the “Contingent Pole Attachment Fee”). Following a Contingent Event, the pole attachment fee for each Supplemental Site License shall increase to the Contingent Pole Attachment Fee on the next ensuing anniversary of such Supplemental Site License’s Commencement Date. Depending on which is applicable pursuant to the terms of this paragraph, the Initial Pole Attachment Fee or the Contingent Pole Attachment Fee shall be the “Pole Attachment Fee” as referred to in this Agreement. The Pole Attachment Fee shall not apply to or be charged for attachments to third-party Facilities, or the installation of Licensee’s proprietary poles in the ROW.

(b) Fee Payment. The Pole Attachment Fee is non-refundable and is payable on or before the initial Commencement Date, and on or before each subsequent annual anniversary of the Commencement Date during the Supplemental Site License Term (or until such earlier time as such Supplemental Site License is terminated). Upon agreement of the Parties, Licensee may pay the Pole Attachment Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose. Licensor agrees to provide to Licensee a completed, current version of Internal Revenue Service Form W-9, or equivalent. Until the requested documentation has been received by Licensee, fees shall accrue in accordance with this Agreement but Licensee shall have no obligation to deliver payments. Upon receipt of the requested documentation, Licensee shall deliver the accrued fees as directed by Licensor.

(c) Default. In the event that Licensee fails to pay the Pole Attachment Fee within ten (10) days after Licensee receives written notice of a monetary default from Licensor, Licensor shall have the option to terminate any Supplemental Site License for which the Pole Attachment Fee is due and remains unpaid. In the event Licensor does not terminate, the Pole Attachment Fee shall accrue interest in the amount of (one percent) 1% per month until paid. In the event that the Pole Attachment Fee is due and unpaid, Licensor shall have the option to terminate any such Supplemental Site Licenses in default.

4.2. Taxes. Licensee shall pay all applicable City, county and state taxes levied, assessed, or imposed on Licensee or on Licensee’s Equipment by reason of this Agreement.

4.3 Electricity. Licensee shall be responsible for paying CSU for all charges for the electricity consumed by the Equipment. When the Equipment requires an electric meter, as determined by CSU, the Licensee shall install or cause to be installed a separate electric meter in accordance with the requirements of CSU, including any charges in connection with meeting such requirements.

4.4 Payments Made. All fees (including the Pole Attachment Fee) and/or additional payments payable to “Licensor” shall be paid to the City at the address provided in Paragraph 18 of this Agreement for Licensor; or to such other persons or at such other places as Licensor may designate in writing; or to CSU if specifically stated as the payee hereunder. All payments shall be in lawful money of the United States of America.

5. Permits and Make Ready Payments. No payment is collected under this Agreement for any Permit issued in connection with the installation of Equipment on or at any Municipal Facility. However, to the extent not in contravention of any Law, all of the Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the Colorado Springs Municipal Code. Licensee or its designee may be required to apply for, obtain and pay the generally applicable fees for a Permit issued by the Licensor for work performed within the ROW, and the ROW will be used according to the plans submitted by Licensee and approved by the Licensor in issuing a Permit. Similarly, Licensee or its designee may be required, as a condition of a Supplemental Site License, to pay for make

ready work which amount, if any, will be estimated by Licensor and payable in advance subject to true up after such work is completed. Make ready work refers to all Licensor work that Licensor determines to be required to accommodate Licensee's Equipment including but not limited to rearrangements of existing attachments, inspections, engineering work, and non-routine tree trimming. Licensee may accompany Licensor on field verifications to assess the nature and extent of any required make ready work. Execution of this Agreement or any Supplemental Site Licenses does not constitute the issuance of a Permit.Design.

6.1. Basic Design and Installation Requirements for Using Municipal Facilities. The basic design of the Equipment will be described in **Exhibit A-1** to each Supplemental Site License. All of Licensee's construction and installation work for its Equipment shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on an existing Municipal Facility location as a suitable site for Licensee's Equipment, but the existing Licensor-owned pole site needs reconfiguration work, including but not limited to replacement of a pole to accommodate the Equipment and existing fixtures, then Licensee shall pay all costs related to such work, including but not limited to installation of the replacement pole and its foundation, transfer of any fixtures, traffic signals, luminaires, banners, and/or other items attached to the existing Licensor-owned pole, and removal and salvage of the existing Licensor-owned pole to the Licensor. Payment by Licensee for any work under this section does not provide Licensee with any ownership interest in the resultant Municipal Facility or any replacement pole. Specifically, Licensor will be deemed to own the original Licensor-owned Municipal Facility and the replacement pole that includes a Municipal Facility. The installation or attachment of the Equipment using the replacement pole shall be at Licensee's sole cost and expense.

6.2. Design Standards for Small Cell Facilities. Any Small Cell Facility installed in accordance with this Agreement shall substantially comply with the applicable or appropriate designs described or depicted in the Colorado Springs Municipal Code, or in any administrative regulations promulgated thereunder. Modifications to the uniform design template for a Supplemental Site License may be proposed by the Licensee by the submission of an alternative design drawing or illustration to the Community Development Manager which drawing or illustration shall clearly identify the differences between the design template and the proposed alternative design. Where the Community Development Manager, after consultation with CSU, finds such submitted alternative design presents a de minimis or nominal visual impact when compared to the uniform design template set forth in Colorado Springs Municipal Code and **Exhibit B**, the Community Development Manager may approve such alternative design which approval shall be evidenced by written acknowledgment signed by the Community Development Manager and affixed to the particular Supplemental Site License. The Community Development Manager shall retain the discretion to deny a proposed alternative design where the Community Development Manager finds the proposed design to be more visually or aesthetically impactful than the uniform design template. In addition to the design standards described in **Exhibit B**, the Licensee shall follow all applicable Colorado Springs Municipal Code and duly adopted and published regulatory provisions related to WCF design.

7. Common Conditions or Requirements Applicable to Supplemental Site Licenses Issued Under this Agreement.

7.1. Damage to Property. If Licensee damages or disturbs the surface or subsurface of any ROW or adjoining property, pole, streetlight fixture, traffic signal, or other public improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor, repair the damage or disturbance in accordance with the Colorado Springs Municipal Code. Licensee acknowledges its responsibility to separately adjust damage it actually causes to private property, if any, in the process of Licensee's exercise of its rights hereunder.

7.2. Municipal Facility Maintenance. Prior to Licensor, or any of Licensor's other licensees, accessing or performing any work on a Municipal Facility on which Licensee has installed Equipment, Licensor may require Licensee to deactivate such Equipment if any of Licensor's employees or agents must move closer to the Equipment than the FCC's recommended minimum distance to remain below the recommended exposure limits of ANSI C95.1-2019. In such case, Licensor will contact Licensee at [REDACTED] to request immediate deactivation.

7.3. Municipal Facility Repair and Replacement.

(a) Subject to Section 7.3(b), if a Municipal Facility with Licensee Equipment needs replacement or repair due to damage, including a traffic accident or deterioration, Licensor may allow Licensee to perform maintenance on or replacement of the Municipal Facility at Licensor's reasonable discretion at Licensee's expense. In the event that neither Party elects to repair or replace the Facility, Licensee shall cooperate with Licensor to temporarily relocate its Equipment, if necessary, in a location mutually acceptable to the Parties.

(b) Should a Municipal Facility repair be required, Licensee and Licensor shall agree to a reasonable schedule that takes into account the nature of the repair. Licensee and Licensor shall have a goal to establish an agreeable schedule within three business days after the damage occurred.

(c) Should a Municipal Facility replacement be authorized and Licensee fail to perform the replacement of the damaged Municipal Facility within 72 hours of the authorization referenced in Section 7.3(a) and Licensor deems it necessary, Licensor may perform a replacement and should it elect to do so, Licensor shall install a "standard pole" as defined in Section 7.3(f) below. Should Licensor perform this work and Licensee later desire to replace the standard pole with a replacement pole, Licensee shall follow the requirements for a new installation plus reimburse Licensor for its time to install the standard pole. Notwithstanding the preceding, Licensor and Licensee may agree to any other replacement timelines and cost allocation.

(d) Should Licensor determine it is necessary to perform a replacement during the 72-hour window described in Section 7.3(c), then Licensor shall install a standard pole. Licensor shall bear the cost of installation and, if necessary, removal of the standard pole upon Licensee's request to install the replacement pole. Notwithstanding the preceding, Licensor and Licensee may agree to any other replacement cost allocation.

(e) In the event Licensor causes the damage to a Licensee-installed Municipal Facility, Licensor is responsible for repairing or replacing the Licensee-installed Municipal Facility with a replacement pole, but Licensor shall only be responsible for the cost of a standard pole and Licensee shall be responsible for the cost of the replacement pole in excess of the cost of a standard pole, and for all other costs relating to replacement and activation of Equipment on the pole and any ancillary facilities related to Licensee's Network.

(f) For purposes of this Agreement, a "standard pole" is a pole that meets the minimum requirements to house Municipal Facilities without any of the Small Cell Facilities on the pole as contemplated herein.

7.4. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate its Equipment. Licensee shall, at Licensor's direction and upon the shorter of (a) ninety (90) days prior written notice to Licensee or (b) the actual date of the need for relocation, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed

for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Equipment is interfering with or adversely affecting proper operation of Licensor-owned poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility and/or traffic signal, streetlight, etc. from the pole. Licensor may also require Licensee to relocate, remove, modify or disconnect Equipment located in the ROW in the event of an emergency, when the public health, safety or welfare requires such change (for example, without limitation, the Equipment is interfering with or adversely affecting proper operation of a Licensor-owned pole, traffic signal, communications, or other Municipal Facilities). In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to Licensor actual costs and expenses incurred by Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from Licensor.

(b) Licensee shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring Licensor to take immediate action. In such event, Licensee's contact is: Network Monitoring Center - [REDACTED]. If after two attempts to make contact by Licensor with no response, Licensor shall have the right to undertake any actions that Licensor may deem reasonably necessary to avoid damage to property or personal injury, and Licensor's reasonable and documented costs for such undertaking shall be paid by Licensee.

(c) In the event of an assignment, sub-license or transfer pursuant to Section 14 of this Agreement, any such assignee or transferee shall immediately provide updated or new contact information pursuant to this provision.

(d) In the event Licensee desires to relocate any Equipment, Licensee may place a temporary installation in the ROW (e.g. cell-on-wheels) upon prior approval by the Licensor and compliance with any applicable permit requirements.

7.5. Non-exclusiveness. Subject to Section 7.6(d), the rights and privileges granted to Licensee under this Agreement, and each Supplemental Site License described herein, are nonexclusive. Licensee shall permit the co-location of other small wireless facilities entities, cable franchise, public utilities, and others with permission to use and occupy the ROW; except that such users shall not be permitted to interfere with Licensee's pre-existing use.

7.6. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical interference and Radio Frequency Interference) resulting from Licensee's installation, operation and/or maintenance of its Equipment:

(a) Radio Frequency Interference. Licensee shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio or television systems, satellite broadcast systems, advanced metering infrastructure and automated meter reading devices operated by a municipal utility, or Licensor traffic, public safety or other communications signal equipment using licensed spectrum existing at the time of installation of the Equipment.

(b) Existing Uses. Licensee shall not interfere in any manner with the existing uses of Licensor property including ROW, and including sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, fiber infrastructure, cable

television, and other telecommunications, utility, and municipal property without the express written approval of the Owner(s) of the affected property or properties.

(c) Licensor Communications. Licensee shall not interfere in any manner with current or future Licensor or other governmental public safety communication.

(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. Licensor additionally agrees that any other tenants, licensees, or users of the ROW who in the future take possession of space within the ROW will be permitted to install only such equipment under conditions similar to those imposed on Licensee restricting future licenses from causing harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment of Licensee.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering Party via telephone to Licensee's Network Monitoring Center at [REDACTED] or to Licensor at (719) 385-5272, the interfering Party shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured to the extent the interfering Party can lawfully exercise control by Law or contract over the source of interference. The Parties acknowledge that there will not be an adequate remedy at Law for noncompliance with the provisions of this Section 7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance. Notwithstanding anything else in this Section, Licensee acknowledges that Licensor operates radio and communications facilities for first responders including, police, fire and EMS services. Licensor shall not be required to reduce power or cease operation of its public safety facilities if Licensor determines that such facilities are reasonably necessary for the safety of the public. Licensee shall have no remedy against Licensor for interference with unauthorized Equipment.

8. Damage to Licensee's Equipment. In the event of any damage to Licensee's Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the willful and wanton misconduct of Licensor, its employees, agents, or contractors; provided, however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same.

9. Title to Equipment.

9.1. Title to the Equipment. Title to and control of the Equipment, exclusive of the Municipal Facility (original or replacement) used for support, but including ground mounted equipment, shall remain with Licensee and shall constitute Licensee's personal property and Equipment, and not fixtures or improvements attached to the land.

9.2. No Ownership in Licensor Property. Neither this Agreement, any Supplemental Site License, nor any license issued herein, nor any Permit separately issued for installation of any Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Equipment is located, or any portion of the ROW. Additionally, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest and except as otherwise expressly provided herein, any right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place, or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3. “As Is” Condition. Licensee accepts the Municipal Facilities identified in any Supplemental Site License, or any replacement pole, in its “AS IS” condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee, and subject to all Laws governing the use of the Licensor poles for Licensee’s intended purpose. Licensor makes no representation or warranty as to its title to the ROW or any Facility. Licensee shall be solely responsible for due diligence as to title to any portion of the ROW or any Facility and shall not be entitled to rely on any statement or approval of Licensor.

10. Maintenance and Repair. Licensee shall keep the Equipment and other improvements by Licensee on the Municipal Facility, if any, in good repair. Licensee shall reimburse Licensor for any increased maintenance costs that Licensor can demonstrate are directly related to Licensee’s failure to properly maintain its Equipment and other improvements on the Municipal Facility in good repair.

11. Hazardous Substances. Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the ROW in which it is located in violation of any Laws. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that Licensee is only using a small portion of the ROW and that Licensee shall not be responsible for any environmental condition or issue except to the extent resulting from Licensee’s, its agents’ or contractors’ specific activities and responsibilities under this Agreement.

12. Indemnity.

12.1 The Licensee shall indemnify, defend and hold the City of Colorado Springs, CSU, the Colorado Springs City Council, the Utilities Board of Directors, and Licensor’s employees, officers, 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 Equipment or a Licensee-installed pole, any of Licensee or Licensee’s employees, contractors, subcontractors, agents and invitees activities on any Wireless Site, or the Licensee’s breach of any provision of this Agreement or Supplemental Site License. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the Licensor or an Indemnified Party.

12.2 Licensor shall give Licensee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with the foregoing indemnification. In the event such claim arises, Licensor or any other Indemnified Party shall tender the defense thereof to Licensee and Licensee shall consult and cooperate with the Licensor’s Attorney’s Office while conducting its defense. Licensor shall cooperate fully therein with Licensee’s legal representative and shall be consulted on any settlements of claims prior the execution of any settlement agreements.

12.3 If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between Licensor and the counsel selected by Licensee to represent Licensor, Licensee shall pay for all reasonable expenses incurred by Licensor as a result of such separate representation; provided, however, in the event separate representation becomes necessary, Licensor shall select its own counsel and any other experts or consultants, subject to Licensee’s prior approval. Licensor’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 Licensor's Attorney or his/her assistants or any employees of Licensor or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided Licensor by Licensee.

12.4 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.

13. Insurance Requirements.

13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in the attached **Exhibit C**. Within 30 days of execution of this Agreement, Licensee also shall submit a Certificate of Insurance to Licensor, which Certificate shall comply with the insurance requirements set forth in this Agreement. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates to Licensor within fifteen (15) business days after the renewal date containing all the necessary insurance provisions.

13.2. No Waiver. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to the City or CSU under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

14. Assignment/Subletting.

14.1. This Agreement and each license granted herein is personal to Licensee and for Licensee's use only. Licensee shall not lease, sub-license, share with, convey or resell to others any such space or rights granted hereunder. Subject to Section 14.3 below, the related rights and privileges may not be assigned or otherwise transferred without the express written consent of City and/or CSU, which consent shall not be unreasonably withheld, conditioned or delayed. Any Agreement which is assigned or otherwise transferred pursuant to this Section shall be equally subject to all the obligations and privileges of this Agreement, including any amendments, which will remain in effect, as if the assigned Agreement was the original Agreement. After assignment, this Agreement, including any amendments, shall be binding on the assignee to the full extent that was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Equipment to a Licensor-owned pole shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, collect any fees owed from Licensee without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent. Licensee and any attempted transferee shall be jointly and severally liable for all obligations of Licensee in this Agreement until such attempted transfer is fully unwound to the satisfaction of Licensor.

14.3. Notwithstanding anything to the contrary in this Section 14, this Agreement in its entirety, together with all Supplemental Site Licenses and/or Permits (that are otherwise transferable by Law) issued by Licensor may be sold, assigned or transferred by Licensee, to (i) any entity in which Licensee holds a controlling or similar interest; (ii) any entity which holds a controlling equity or similar interest in Licensee; (iii) any entity under common control with Licensee; (iv) any other entity that has a valid master license agreement with the City for the operation of Small Cell Facilities and is in full compliance with all obligations to the Licensor; (v) any entity which acquires all or substantially all of Licensee's assets in

the market defined by the FCC in which the Municipal Facility is located by reason of a merger, acquisition or other business reorganization, provided in each case that such acquiring entity has debt to equity and profitability ratios consistent with mature companies in business for five or more years in the same or similar business and agrees to comply with federal, state, and local laws, and Licensee and the new entity represent to Licensor that the new entity has not had a decision entered against the new entity for a violation of a local permit. Licensee shall provide written notice to Licensor within thirty (30) days after any transfer permitted by this Section.

15. Default.

15.1. Default of Licensee.

(a) For any breach of this Agreement or any Supplemental Site License, except for obligations to pay money when due, Licensor shall provide Licensee with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensee may: (a) demonstrate that a violation does not exist, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date, subject to Licensor's written approval, which approval will not be unreasonably withheld. For a breach of Licensee's obligations to pay money when due, Licensor shall provide Licensee with notice, and Licensee shall have ten (10) days in which to cure.

(b) If Licensee 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 if Licensee has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Licensor may declare in writing that Licensee is in default.

15.2. Default of Licensor.

(a) Licensee shall provide Licensor with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensor may: (a) demonstrate that a violation does not exist, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents correction thereof within thirty (30) days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date; provided, however, that such plan shall be subject to Licensee's written approval where Licensee's Equipment or operations will be affected by the corrective action, which approval will not be unreasonably withheld.

(b) If Licensor 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 if Licensor has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Licensee may declare in writing that Licensor is in default.

15.3. Termination. In the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement if the default affects all Supplemental Site Licenses and the Agreement as a whole, or any Supplemental Site License subject to the default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Law. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

16. Bankruptcy. The Parties expressly agree and acknowledge that it is their intent that in the event Licensee shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United

States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”), for the purposes of proceeding under the Bankruptcy Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Bankruptcy 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 or entity to which Licensee’s rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act to have assumed all of the obligations of Licensee arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Licensor 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 Licensor, shall be the exclusive property of Licensor, and shall not constitute property of Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Licensor’s property under the preceding sentence not paid or delivered to Licensor shall be held in trust for the benefit of Licensor and be promptly paid to Licensor.Surrender. On or prior to the date of the expiration of the Term of any Supplemental Site License, or upon the earlier termination thereof, Licensee shall remove all Equipment, at its sole expense, shall repair any damage to the Municipal Facilities or the ROW caused by such removal, and shall restore the Municipal Facilities to the condition in which they existed prior to the installation of the Equipment, reasonable wear and tear and loss by casualty or other causes beyond Licensee’s control excepted.

18. Notices. Any notice, request, demand, statement, or consent herein required or permitted to be given by either Party to the other hereunder, shall be in writing signed by or on behalf of the Party giving the notice and addressed to the other at the address as set forth below:

<u>Licensee</u>	COMPANY NAME ADDRESS Attn: _____
<u>Licensor</u>	City of Colorado Springs 30 S. Nevada Avenue, Suite 604 Colorado Springs, CO 80903 Attn: Office of Innovation
With copy to:	City of Colorado Springs 30 S. Nevada Avenue, Suite 501 Colorado Springs, CO 80903 Attn: City Attorney’s Office
	Colorado Springs Utilities 1521 S. Hancock Expressway P.O. Box 1103, Mail Code 1812 Colorado Springs, CO 80947 Attn: Field Engineering

Each Party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. With the exception of emergencies for which alternative notice directions are provided, each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder (i) two business days after it shall be mailed by United States certified mail, postage prepaid and return receipt requested, in any post office or branch post office regularly maintained by the United States Postal Service, (ii) upon personal delivery, or (iii) one business day after deposit with any

recognized commercial air courier or express service. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement. Where Licensor provides notice to Licensee, notice provided by either CSU or the City shall constitute notice provided by the Licensor.

18.1. Emergency Contact. As set forth above, Licensee and Licensor shall make certain that each has a designated contact person available 24/7 in the event of an emergency requiring immediate action. In such event, Licensee's contact is: [REDACTED], and Licensor's contact is: CSU's Customer Service Center – 719-448-4800. Each Party shall be obligated to maintain a current emergency contact number with the other Party and notify the other Party of any changes.

19. Miscellaneous.

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all negotiations, understandings or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Colorado, and the City Charter, and the Colorado Springs Municipal Code, and applicable federal Law.

19.4. Authority to Execute. Any individual executing this Agreement on behalf of Licensor, Licensee or Licensee's successors or assigns represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms.

19.5. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both Licensor and Licensee expressly reserve all rights they may have under law to the maximum extent possible, and neither Licensor nor Licensee shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

19.6. Survival of Terms. Any provision of this Agreement which must survive its expiration or termination in order to be given effect shall so survive. The following Sections shall specifically survive the expiration or termination of the Agreement and any Supplemental Site License: Sections 12, 16, 17 and 19, including all subsections of each.

19.7. Force Majeure. With respect to any provisions of this Agreement, except for the Licensee's obligations to pay money to Licensor, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8. Limitation of Liability. Except for indemnification pursuant to Section 12, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue,

lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.9. 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.

19.10. Appropriations. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of Licensor which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by Licensor. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

19.11. No Third-Party Beneficiaries. This Agreement benefits only the Parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

19.12. Other ROW Users. The Parties understand and agree that Licensor permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, Licensor shall not be liable to Licensee for any damage caused by those persons or entities.

19.13. Public Disclosure. Licensee acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act § 24-72-202(6), C.R.S., and accordingly may be disclosed to the public.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ____ day of _____, 2020 (the "Execution Date").

LICENSOR:
City of Colorado Springs,
a Colorado home rule municipality

LICENSEE:

By: _____
Print Name: _____
Its: _____

By: _____
Print Name: _____
Its: _____

City of Colorado Springs, through its enterprise, Colorado Springs Utilities
By: _____ Print Name: _____ Its: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

ATTEST:

Sarah Johnson, City Clerk

APPROVED AS TO FORM:

Ben Bolinger, Attorney for City

EXHIBIT A

Form of Supplemental Site License

This Supplemental Site License (“Supplement”), made this ____ day of _____, 20__ (“Effective Date”) between the City of Colorado Springs, a Colorado home rule municipality, with an address of 30 S. Nevada Avenue, CO 80903, including its enterprise, Colorado Springs Utilities, hereinafter designated “Licensor” and _____, with its principal offices at _____, hereinafter designated “Licensee”:

1. Supplement. This is a Supplemental Site License as referenced in that certain Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network, between Licensor and Licensee dated _____, 20__ (“Agreement”). All of the terms and conditions of the Agreement are incorporated 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 Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations.

Licensee shall have the right to use CSU-owned streetlight poles, pursuant to a fully executed Supplemental Site License and special provisions at the designated areas in the ROW as further described in Exhibit A-1 and A-2 attached hereto (the “Licensed Area”); OR

Licensee shall have the right to use City-owned traffic signal poles, pursuant to a fully executed Supplemental Site License and special provisions at the designated areas in the ROW as further described in Exhibit A-1 and A-3 attached hereto (the “Licensed Area”); OR

Licensee shall have the right to use third-party poles pursuant to a fully executed Supplemental Site License and the written terms required by the Owner of such poles at the designated areas in the ROW as further described in Exhibit A-1 attached hereto (the “Licensed Area”); OR

Licensee shall have the right to use CSU-owned electric distribution poles, pursuant to a fully executed Supplemental Site License and special provisions at the designated areas in the ROW as further described in Exhibit A-1 and A-4 attached hereto (the “Licensed Area”); OR

To the extent permitted by and in conformance with, City regulations and ordinances, on the Licensee’s proprietary poles pursuant to a fully executed Supplemental Site License at the designated areas in the ROW as further described in Exhibit A-1 attached hereto (the “Licensed Area”).

3. Equipment. The Equipment to be installed at the Licensed Area is described in **Exhibit A-1** attached hereto.

4. Term. The Supplement Site License Term shall be as set forth in Section 3.1 of the Agreement.

5. Fees. The initial annual Pole Attachment Fee of this Supplement shall be as set forth in Section 4.1 of the Agreement and applicable only to those attachments described in Section 2(a) of this Supplemental Site License. There shall be no charge to Licensee to attach Equipment to a third party pole (as described in Section 2(d) of this Supplemental Site License), or to place Licensee's proprietary pole in the ROW (as described in Sections 2(b) and (c) of this Supplemental Site License).

6. Commencement Date. The first day of the month following mutual execution of this Supplement.

7. Approvals/Fiber. It is understood and agreed that 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, as well as a satisfactory fiber and electrical connection which will permit Licensee use of the Licensed Area as set forth above. 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, expired, lapsed, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain or maintain, in a satisfactory manner, any fiber or power connection; or (v) Licensee determines that the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate this Supplement. Notice of Licensee's exercise of its right to terminate shall be given to Licensor pursuant to Section 18 of the Agreement, 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, this Supplement 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. Otherwise, Licensee shall have no further obligations for the payment of fees to Licensor.

8. Miscellaneous.

[insert any additional provisions].

[Signature page follows]

EXECUTED to be effective as of the date shown above.

LICENSOR:

City of Colorado Springs,
A Colorado home rule municipality

By: _____
Print Name: _____
Its: City Administrator

[IF NECESSARY DEPENDING ON WIRELESS SITE]

City of Colorado Springs,
through its enterprise,
Colorado Springs Utilities

By: _____
Print Name: _____
Its:

ATTEST:

[Name of signatory], City Clerk

APPROVED AS TO FORM

BY: _____
[Name of attorney], Attorney for City

APPROVED AS TO FORM [IF NECESSARY DEPENDING ON WIRELESS SITE]

BY: _____
[Name of attorney], Attorney for CSU

LICENSEE:

By: _____
Print Name: _____
Its: _____

Exhibits:

Exhibit A-1

[AND OTHER EXHIBITS (e.g., A-2, A-3 or A-4) as needed]

EXHIBIT A-1

**Licensee Plans, Licensed Area, and Description of Facilities/Equipment
to be Installed as Approved by Licensor**

EXHIBIT A-2

Attachments to Colorado Springs Utilities

Street Light Facilities

Street Light Pole Replacement Requirements

Any street light poles considered for Licensee Equipment placement shall be subject to review and approval by Colorado Springs Utilities (CSU). CSU may approve, reject, or require modifications to any installation it deems appropriate to promote the health, safety and welfare of the City of Colorado Springs and/or CSU.

These requirements apply when CSU determines that an existing streetlight pole must be replaced with a Licensee-installed streetlight pole.

1. Specifications. Licensee shall install, maintain and remove all Equipment in accordance with CSU's Line Extension and Service Standards and Specifications found at www.csu.org. Licensee shall be responsible for familiarizing itself with the Standards and Specifications, which specifications and standards shall meet or exceed those set forth in the National Electric Safety Code in effect at the time of approval. Additionally, the following minimum requirements exist for wireless antenna attachments:

- i. Wiring for the streetlight and the Equipment must be in a separate duct or raceway. Additionally, the streetlight and the Equipment must have separate feeds.
- ii. Streetlight must have a local (individual) photocell control. The cost for conversion of the associated streetlights to individual photocell shall be borne by Licensee.
- iii. Small Cell antenna must have RF transmitter disconnect to protect Licensor's employees and contractors.

2. Streetlight Pole Installation. Licensee shall have the right, after receiving consent from Licensor to change out and replace the subject CSU Streetlight Pole at Licensee's sole cost and expense.

- i. Prior to the replacement, CSU shall confirm in writing that it has received all requested studies, engineering drawings and plans from Licensee.
- ii. Licensee's change out or replacement of a CSU Streetlight Pole shall be conducted in accordance with good engineering practices and comply with all relevant rules and regulations and all studies, engineering drawings and plans approved by CSU.
- iii. Within thirty (30) days of the completion of the replacement or change-out of a CSU Streetlight Pole, Licensee will provide CSU with as built drawings of the Licensee- installed pole.
- iv. Upon completion of the replacement or change out, the Licensee-installed pole shall be owned by Licensor without the need of any further documentation.
- v. Licensor shall be responsible for ongoing maintenance of any streetlighting equipment on the Licensee-installed pole to include, but not limited to, replacement of lamps, upgrades, and electricity use.

3. Maintenance Process.

- i. Licensee shall, at its sole cost and expense, maintain and repair its Equipment in good and safe condition and in accord with CSU's Standards and Specifications.
- ii. Licensee will provide any custom (non-standard CSU practice) streetlight poles (including any custom precast concrete base).
- iii. Any maintenance or installation of Equipment in the area encompassing electric supply lines, which area is typically above the communication worker safety zone per NESC 235C4 (the "supply space") must be performed by personnel qualified to work in the supply space.
- iv. In the event of a pole knock down or other damage to a streetlight pole with Equipment, the following process will be followed:
 - a. CSU will de-energize antenna power at the service pedestal or source of supply. This may include cutting locks if necessary. Personnel are to maintain a safe distance from antennas (at least 7 feet) until de-energized.
 - b. CSU will notify Licensee using the phone number on warning labels (if any), move the pole out of the right of way, and lock-out-tag-out the service disconnect. Unless the damage is caused by Licensee's Equipment, CSU shall bear these costs.
 - c. Licensee will perform the necessary repair or replacement of its Equipment and, if authorized by CSU, the damaged streetlight pole as set forth in Section 7.3 of the Agreement.
 - d. Licensee will notify CSU that their work is completed and ready for a streetlight fixture to be re-installed. CSU will replace the streetlight fixture and associated wiring on a schedule determined by CSU. This will require temporary de-energizing of the antenna Equipment.

4. Antenna Regulation. Permittee shall at all times comply with all applicable FCC and FAA rules and regulations. In the event that Permittee fails to so comply, Permittee agrees to correct its coordination, height, or other data and implement, or cooperate in the implementation of any necessary filings or modifications as required by the FCC or the FAA, or in order to comply with Laws.

EXHIBIT A-3

Attachments to City

Traffic Signal Facilities

Traffic Signal Pole Requirements

Any traffic signal poles considered for Licensee Equipment placement shall be subject to review and approval by City Engineering and the Community Development Manager. The Manager may approve, reject, or require modifications to any installation if he/she deems it in the best interest of the City.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading or other structural conditions will require an engineering analysis signed and stamped by a Colorado licensed professional engineer. Any proposed loading or other structural change such as additional pole penetrations, weight of equipment, or wind loading shall also be reviewed and approved by the original pole manufacturer. Costs to prepare and review this information will be borne by Licensee.

Traffic signal poles already supporting City Equipment such as wireless links, cameras, or other externally mounted equipment are not eligible to be considered for Licensee Equipment placement. Licensee Equipment placed on traffic signal poles may be required to be removed or relocated at any time if the City infrastructure is needed for placement of City Equipment.

Mounting of Equipment external to the pole shall be with stainless steel banding. In no case shall Equipment be bolted to the pole or use other mechanical fasteners.

All Equipment shall be mounted to have minimum visual profile, and low profile mounting brackets and antennas may be required. No antennal shall extend higher than the current top of pole. All Licensee Equipment mounted on City traffic signal poles shall match the pole in color, currently Federal Green Davis color 14056.

Installations on signal poles shall be physically separated from City wiring. A single 2' or smaller duct shall be installed inside each pole in use as a cableway. At the City discretion the cables may exit the pole through existing conduit in the pole foundation or a new exit point may be required. In no case will wire or conduit penetration through handhole covers be permitted. External cabling attached to the traffic signal pole will not be permitted.

Licensee Equipment shall be bonded to the Licensee's electric meter pedestal following National Electric Code standards. The traffic signal structure shall not be considered a suitable ground path.

Any ground mounted Equipment such as cabinets must be placed a minimum of 30' from any existing traffic signal pole or traffic signal cabinet. Ground mounted Equipment must be placed in an underground vault where feasible, or located in an area with minimal visual impact as determined by the City. Above grade cabinets shall not be placed in intersection sight distance triangles.

Licensee cables, conduits, mounting hardware, or other equipment must not interfere with installation, access to or operation of any City owned devices. Specific clearances may be required and will be reviewed on a case by case basis.

Analysis and physical test data must be provided to show the proposed Equipment will not interfere with the City's wireless network currently operating in the 900 MHz and 5.8 GHz, 806 – 824 MHz, 851

– 869 MHz, 18GHz, 11GHz, 4.9GHz and 3.65GHz, and upper and lower 6GHz band frequencies and any licensed frequencies that may be used by the City in the future. If City used frequencies change, Licensee may be required to show their Equipment will continue to operate without interference. Licensee proposed Equipment must also be tested and reviewed to avoid interference with other City owned Equipment such as radar or microwave based detection Equipment.

For installations on signal poles, Licensee’s crew foreman or onsite supervisor must hold at least a Level II IMSA Traffic Signal Field Technician certification, and be onsite for any work.

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 (3) 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 Licensee due to any work performed by or authorized by the City. Equipment removal or resets shall be completed by Licensee within 72 hours of notice by the City. If work is not completed within the 72 hour window, the City may remove Licensee Equipment and charge Licensee reasonable costs for labor and Equipment. No warranty of condition of Licensee Equipment will be made. Under emergency conditions the City may remove any Equipment it deems necessary

EXHIBIT A-4

Attachments to Colorado Springs Utilities

Electric Distribution Poles

TO BE INSERTED NO LATER THAN JUNE 1, 2020. AT THE REQUEST OF EITHER PARTY, THIS AGREEMENT MAY BE AMENDED TO INCORPORATE THE TERMS OF THIS EXHIBIT A-4.

EXHIBIT B
Operational and Design Criteria

A. Operational Standards.

(a) **Federal Requirements.** All Small Cell Facilities and other WCFs and associated equipment (collectively, “Equipment”) shall meet the current standards and regulations of the FAA, FCC and any other agency of the federal or state government with the authority to regulate telecommunications equipment. If such standards and regulations are changed, Licensee shall bring such Equipment into compliance with such revised standards and regulations within the time period mandated by the controlling federal or state agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the Equipment from any site under this Agreement at Licensee’s expense.

(b) **Radio Frequency Standards.** All Equipment shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for Equipment are made to Licensor, Licensor may request Licensee provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the Equipment may not be in compliance, Licensor may request and Licensee shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all Equipment installed at the subject site, and which compares the results with established federal standards. If, upon review, Licensor finds the Equipment does not meet federal standards, Licensor may require corrective action within a reasonable period of time, and if not corrected, may require removal of the Equipment as an unauthorized use under this Agreement. Any reasonable costs incurred by Licensor, including reasonable consulting costs to verify compliance with these requirements, shall be paid by Licensee upon demand by Licensor or, if such costs remain unpaid after demand, Licensor may recover such costs by the same manner and method authorized to recover nuisance abatement costs under the City Municipal Code.

B. Colorado Springs Utilities Standards. All Small Cell Facilities and other WCFs and associated equipment (collectively, “Equipment”) shall meet the current Electric Line Extension and Service Standards requirements. If such standards are changed, Licensee shall bring such Equipment into compliance with the revised standards within the time period mandated by Colorado Springs Utilities. Failure to meet such revised standards shall constitute grounds for the removal of the Equipment from any Wireless Site authorized under this Agreement at Licensee’s expense.

C. Design Standards. In addition to any requirements of the Colorado Springs Municipal Code and any administrative regulations promulgated thereunder, the requirements set forth in this Exhibit shall apply to the location and design of all Equipment governed by this Agreement as specified below; provided, however, Licensor may waive these requirements if it determines the goals of this Exhibit are better served thereby. To that end, Equipment shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.

(a) **General Principals.**

- i. All Equipment covered by this Agreement shall be as architecturally compatible with the surrounding area as feasible;
- ii. Where technically feasible and to the extent required by the Colorado Springs Municipal Code and CSU’s Electric Line Extension and Service Standards, all electrical, communication, and other wiring to Small Cell Facility components, including radios, antennas and backhaul connections, shall be fully concealed, internal to the structure where possible and shrouded in all other instances;

- iii. No pole shall be extended to a height in excess of 45 feet without the express written approval of Licensor. In any case, height or size of the proposed Equipment and any replacement pole should be minimized and conform to the standard form factor of Licensor Municipal Facility to the maximum extent practicable;
 - iv. All Small Cell Facilities are to be mounted on metal poles where possible;
 - v. Small Cell Facilities shall be sited in a manner that takes into consideration its proximity to residential structures and residential district boundaries, uses on adjacent and nearby properties, and the compatibility of the facility to these uses, including but not limited to proximity of the Wireless Site to first and second story windows;
 - vi. Equipment shall be designed to be compatible with the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor traffic signal, street light, or distribution pole to the maximum extent practicable; and
 - vii. WCFs and any associated landscaping fencing shall be designed and located outside of intersection sight distances and in accordance with Licensor's regulations and policies.
 - viii. All Equipment and any associated elements shall be located in a manner that is compliant with all laws, including by not limited to the Americans with Disabilities Act.
- (b) Camouflage/Concealment. All Equipment shall, to the extent possible, match the appearance and design of existing Licensor traffic signal, street light, or distribution poles adjacent to the Wireless Site; and when not technically practicable, that Small Cell Facility is to use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, landscaping, or other design options that will blend the Small Cell Facility to the surrounding natural setting and as built environment. Design, materials and colors of Equipment not identical to existing Licensor traffic signal, street light, or distribution poles shall otherwise be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.
- i. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where Equipment is located in areas of high visibility, they shall (where possible) be *designed to minimize their profile*.
 - ii. All Equipment, including antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
- (c) Hazardous Materials. No hazardous materials shall be permitted in association with Equipment, except those necessary or requested for the operations of the Small Cell Facilities and only in accordance with all Laws governing such materials.
- (d) Siting.

- i. No portion of any Equipment may extend beyond the ROW without prior approval(s).
 - ii. Collocation and Modification. The Parties acknowledge that it is the intent of this Agreement to provide general authorization to use the ROW for Wireless Sites as permitted under Laws. The designs approved by Licensor for the installation of Equipment, as authorized in the supplements and/or authorizations that will govern each specific site are intended to be concealment elements under 47 C.F.R. §1.6100 (as amended). All applications for collocations and/or modifications of facilities governed by this Agreement will be subject to Laws, including without limitation all other applicable and relevant provisions of 47 C.F.R. §1.6100 (as amended). This Agreement additionally incorporates the requirements of the City Code, including but not limited to Chapter 7, Article 4, Part 6, as amended from time-to-time.
 - iii. Equipment shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below City standards unless it is the only option.
- (e) Lighting. Small Cell Facilities shall not be artificially lit, unless required by the FAA or other applicable governmental authority, or the Small Cell Facility is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, Licensor may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- (f) Landscape and Fencing Requirements.
- i. Ground-mounted Equipment shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below City standards.
 - ii. Unless otherwise mutually agreed to by the parties, ground-mounted Equipment components shall be landscaped with a buffer of plant materials that effectively screen the view of the Equipment from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
 - iii. In locations where the visual impact of the Equipment would be minimal, the landscaping requirement may be reduced or waived altogether by Licensor.
- (g) Noise. Noise generated on the site must not exceed the levels permitted by local standards, except as may be expressly permitted by local approval.
- (h) Additional design requirements shall be applicable to the various types of Equipment as specified below:
- i. Base Stations. Any antenna installed on a structure other than a municipal structure (including, but not limited to the antennas and accessory equipment) shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

- ii. Alternative Tower Structures located in the Right-of-Way. In addition to the other criteria contained in this Exhibit and applicable local codes, an Alternative Tower Structure located in the right-of-way shall:
 - a. With respect to its pole-mounted components, be located on an existing utility pole serving a utility; or
 - b. Be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Tower Structure will be located; or
 - c. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by Licensor and any communications companies on utility poles near the Alternative Tower Structure;
 - d. Be sized to minimize the negative aesthetic impacts to the right-of-way;
 - e. Be designed such that antenna installations near traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be negatively impacted and so as not to create a visual distraction to vehicular traffic;
 - f. Require any ground mounted equipment be located in a manner necessary to address both public safety and aesthetic concerns under local requirements, and may, where appropriate, require a flush-to-grade underground equipment vault; and
- iii. Related Accessory Equipment. Accessory equipment for all Equipment shall meet the following requirements:
 - a. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
 - b. The total footprint coverage area of the accessory equipment shall not exceed thirty-six (36) square feet;
 - c. Accessory equipment, including but not limited to remote radio units, shall be located out of sight by locating behind landscaping, parapet walls, within the pole or behind an attached sign on a pole or underground. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.
 - d. Notwithstanding i-iii, accessory equipment shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way.
- (i) Setbacks and Separation. The minimum setbacks and separation requirements as set forth in the Colorado Springs Municipal Code shall apply to all Equipment and each Supplemental Site License.
- (j) Nothing in the Agreement or this Exhibit B shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or

similar high-powered cellular or wireless broadband facilities in the ROW, or the installation of macro wireless towers, or poles intended for macro facilities.

EXHIBIT C

Licensee's Limits of Insurance Requirements

1. Licensee and its subcontractors shall carry during the Term, at their own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a limit of liability of \$3,000,000 per occurrence and \$5,000,000 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; (iii) Workers' Compensation Insurance as required by law; and (v) employers' liability insurance with limits of \$1,000,000 bodily injury each accident, \$1,000,000 disease each employee, and \$1,000,000 bodily injury disease policy limit.

2. All of the insurance coverages identified in Section 1, except the workers' compensation insurance and employer's liability, shall apply to and include "The City of Colorado Springs, its subsidiaries and enterprises, and each of their elected officials, officers, board members, employees, volunteers and agents," as an additional insured as their interest may appear under this Agreement. The workers' compensation and employer's liability insurance coverages shall contain a waiver of subrogation for the City's and Colorado Springs Utilities' benefit that provides "The City of Colorado Springs, its subsidiaries and enterprises, and each of their elected officials, officers, board members, employees, volunteers and agents". Further, the insurance coverages identified in Section 1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City.

3. Upon execution of this Agreement, Licensee shall provide the City with a Certificate of Insurance and blanket additional insured endorsements evidencing of the coverage required by this **Exhibit C**.

4. Upon receipt of notice from its insurer(s), Licensee shall provide thirty (30) days advance notice to the City and Colorado Springs Utilities in the event of cancellation of any coverage.

5. A certificate of all insurance required hereunder shall be furnished upon request to the City and Colorado Springs Utilities.

6. All of the insurance policies Licensee and its subcontractors are required to maintain pursuant to this **Exhibit C** shall be obtained from insurance carriers having an A.M Best rating of at least A-VII.

7. General.

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a Certificate of Insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance business licensed, authorized or permitted to transact business in the State of Colorado, possessing a current A.M. Best, Inc. rating of A-VII or better, and coverage shall be reasonably satisfactory to Licensor.

B. Licensee shall, and shall require any of its contractors to obtain and maintain substantially the same coverage as required of Licensee, procure and maintain, until all of their obligations have been discharged.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensors in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

8. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's commercial general liability insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The commercial general liability policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee.

(4) Licensee is required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of one (1) year following completion and acceptance of the work. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this period evidencing the insurance requirement and, including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice of cancellation from its insurer, Licensee endeavor to provide the Licensor with prior written notice of the notice of cancellation. Such notice shall be sent directly to Colorado Springs Utilities, Attn: Utilities Risk Manager, 121 S. Tejon, Mail Code 950, Colorado Springs, CO 80903 with a copy of the notice to the City's Risk Manager at Attn: Risk Manager, 30 S. Nevada Avenue, Suite 303, Colorado Springs, Colorado 80903.

9. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability, include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee.