MASTER LICENSE AGREEMENT BETWEEN THE CITY OF EVANS, COLORADO AND _____ FOR THE USE OF THE CITY'S PUBLIC RIGHT-OF-WAY PROPERTY IN CONNECTION WITH THE OPERATION OF A SMALL CELL WIRELESS NETWORK

This Agreement is made and entered into by and between the City of Evans, a Colorado home rule municipality ("Licensor") and _____, ("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, each of which is deemed to be a material term and provision of this Agreement:

A. Licensor is the owner of rights-of-way, streets, and similar property rights, as well as certain municipal facilities located in the public rights-of-way situated within the City limits of Evans, Colorado ("ROW").

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

C. Licensee owns, controls, maintains, or operates a wireless and fiber communications network serving customers.

D. 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") in the public ROW.

E. Licensee agrees to comply with Licensor's ROW and land use requirements as provided herein. Licensee acknowledges Licensor's right to require Licensee to obtain permits for work in Licensor's ROW, and to comply with Licensor's requirements for such permits.

F. Licensee is willing to compensate Licensor in exchange for a grant and right to use and physically occupy portions of the ROW.

AGREEMENT

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

(a) **Exhibit A**: MLA Application Attachments/Exhibits are listed below:

(1) **MLA Form.** An executed copy of the MLA shall be submitted with all attachments described below as required from the Pre-Application meeting.

(2) **Submittal fees**. Application fees in accordance with the fee scheduled published annually in the Community Development Department.

(3) **Proof of Ownership or Lease Rights**. The applicant shall demonstrate that it owns or has lease rights to the subject site (prior to construction) inclusive of a pole attachment or license agreement, for example. The property and tower owner(s) shall sign the application form or provide a letter of authorization.

(4) An executed list of **Surrounding Property Owners** within 500' of the site(s) and evidence the applicant has notified the Surrounding Property Owners along with any concerns and how the concerns will be addressed.

(5) **Project Description**. A project statement identifying the proposed facility and the communication service to be provided by the proposed facility. The project statement must indicate the facility's suitability for co-location, which is encouraged where co- location will have less visual impact on the surrounding area than another facility. The project description shall include a written description of how the proposal complies with all applicable standards. The project description shall include the number, type and size of antennae or appurtenances that can be accommodated.

(6) **Site Plan** illustrating the following items:

(7) **Vicinity Map**. The Vicinity Map include all residential properties located within 1,000 feet of the proposed site.

(8) **Site Plan Details**.

a. The relative shape, size/dimensions, setback, color, height and location of all existing and proposed structures including guy wires anchors; freestanding facilities, antenna, ground-based, below-grade, above-grade equipment; warning signs, fencing, landscaping and access restrictions.

b. If overhead lines exist, the Site Plan shall illustrate how overhead lines will be relocated underground.

(9) **Elevation Drawings**. Elevation drawings of the proposed facility and any ground-based equipment. The drawings should indicate the location on the site, height, appearance, color, and material proposed, including information concerning topography.

(10) **Photo-Realistic Simulations or Renderings**. Photo simulations which illustrate "before" and "after" conditions as they relate to installation of the SCF, if requested at the Pre-Application meeting. Photos should be taken

from all adjoining public streets and, when adjacent to residential properties, from the vantage point where the SCF and equipment will be visible. The City may request visual 3D simulations.

(11) **Signal Non-Interference Letter**. A letter certifying all SCFs shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.

(12) **Radio Frequency Emissions Letter**. A letter certifying all SCFs shall comply with federal standards for radio frequency emissions and that they ensure ongoing compliance. A Non-Ionizing Radiation Electromagnetic Radiation Report may be substituted for the Radio Frequency Emissions Letter.

(13) **Federal Aviation Administration (FAA) letter.** If located near an airport as defined by an airport influence area or in a flight path, the application must include an FAA response to the notice of proposed construction or alternation (FAA Form 7460-1 or equivalent).

(14) **Abandonment and Removal.** A letter or affidavits on a form approved by the City shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a SCF that is abandoned or is unused for a period of six (6) months. A bond shall be provided to the City to cover removal and site reclamation.

(15) **Insurance.** The licensee shall maintain current at all times liability and property insurance for each SCF.

(16) **For properties in floodplains or in or near wetlands.** The applicant will need to submit a drainage report.

(17) **For properties with federally significant historic or environmental features.** Applicant shall submit letter and documentation showing that all National Environmental Policy Act (NEPA) requirements have been met.

(18) **Building permit application.** The applicant shall submit a building permit application to be processed concurrently.

(19) **Structural Letter.** A letter from an Engineer licensed in the State of Colorado demonstrating compliance with applicable structural standards and the general structural capacity of the proposed facility.

(20) **Additional Permits.** Additional permits that may be required for work in the ROW or electrical metering.

(21) **Other Information.** Additional information deemed by the Community Development Director to be necessary to assess compliance with this section.

(b) City of Evans Wireless Communications Facility Development Standards are found in the Municipal Code, as in effect on the date of this Agreement but which may be amended from time to time as described in the Standards.

(c) **Exhibit B:** Licensee's Limits of Insurance. In the event of any conflict between this Agreement, including the Exhibits, and the Evans Municipal Code or the Evans Wireless Communication Facility Development Standards ("Standards"), as they exist on the effective date of this Agreement, the Evans Municipal Code or the Standards prevail, except as federal or state law may preempt or act to modify the Evans Municipal Code or the Standards at present or in the future. Future amendments to the Evans Municipal Code and the Standards shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, so long as the amendments to the Evans Municipal Code or Standards do not alter any material rights granted herein, and except as federal or state law may preempt or act to modify the Evans Municipal Code or the Standards.

2. Grant of License and Terms.

2.1. License. Licensor hereby grants to the Licensee a non-exclusive license to use and occupy the ROW throughout Licensor's territorial boundaries, 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 ("License"). 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 applicable Laws.

2.2. Scope and Priority. Licensee's Equipment may be attached to, replace structures or installed in the public right-of-way in the City with the following order of priority of attachment (or replacement, as may be required), except as otherwise agreed to between the Parties or as may otherwise be required by this Agreement or the Evans Municipal Code:

(a) Third-party poles under the terms of a fully executed pole attachment agreement with the Owner of such poles;

(b) City-owned poles, including street lighting poles and utility poles, in the ROW;

(c) New street lighting poles approved by the City for street lighting purposes, or Licensee's proprietary poles to the extent permitted by, and in conformance with, City regulations and ordinances;

(d) City's traffic signal poles. Locations will be prioritized based upon Licensee's technical and radio frequency needs and construction costs, but in any situation where Licensee has a choice of Equipment locations, the Parties shall mutually exercise good faith effort to agree on attachments to poles in the order indicated above.

2.3. Approval Process. The Parties agree that the application and approval process to install the Equipment covered by this Agreement shall be conducted pursuant to the City's application process in effect at the time of the filing of the application for such approval.

2.4. Modifications. The Community Development Director shall determine if the modification is a Minor Modification or a Substantial Modification.

(a) Minor Modifications. Notwithstanding anything in the Agreement to the contrary, Licensee may make modifications to the Equipment with like-kind or similar Equipment subject to permitting required under applicable Laws and/or permission granted by the Owner of the subject pole, and with advanced written notice of at least two business days to Licensor by email without obtaining a new Site Supplement, to the extent that: (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, or loading impacts on the pole as approved by Licensor or impact multi-modal traffic flow; or (ii) such modification involves replacement of the pole or attachment with a pole or attachment that is the same, or smaller in weight and dimensions as the approved attachment and does not impact multi-modal traffic flow.

(b) Substantial Modification. Any modification which does not meet the requirements of a Minor Modification as defined in paragraph 2.4(a) above shall be considered a Substantial Modification. For all Substantial Modifications, Licensee shall first obtain the written approval from Licensor for the use and installation of the desired Equipment by submitting an application to Licensor according to Licensor's application process in effect at such time of request for approval or as otherwise authorized by Laws and required municipal permitting regulations, which approval shall not be unreasonably withheld, conditioned, or delayed. 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 the 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 and traffic control plan approvals for any work performed by the Licensee within the ROW, and the allowable hours for work in the ROW under the Evans 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 sixty (60) days of such request. The inventory shall include location of each installation by GIS coordinates, License Site ID #, type of pole used for installation, pole Owner, and designation/type of installation, for each Wireless Site Equipment installation within the ROW. Licensee may exclude from the inventory any Wireless Sites that are deactivated if all of Licensee's equipment is removed entirely from the ROW. The City will compare the inventory to its records to identify any discrepancies.

2.7. Licensor's request for a current inventory shall be limited to no more than one time per calendar year throughout the Term.

2.8. Additional Installations. 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 building or electrical Permits (and paying associated Permit fees), the 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 pole Owners located within the ROW as may be permitted by the public utility company or pole Owner, as the case may be. In such situation, a Site Supplement shall be required to the MLA but a Pole Attachment Fee shall not be paid. Licensee will obtain all required Permits, approvals, and agreements necessary for installation on third party poles in the ROW.

2.9. Unauthorized Installations. Any SCF or any Wireless Site owned or operated by the Licensee or an Affiliate of the Licensee which SCF or Wireless Site is not authorized in accordance with this Agreement and any applicable Laws shall constitute a material breach of this Agreement. Upon discovery of any unauthorized SCF or unauthorized Wireless Site and upon notice by the Licensor, the Licensee shall immediately and without undue delay decommission or otherwise render the SCF or Wireless Site inoperable and the Licensee shall remove the unauthorized SCF or Wireless site within sixty (60) 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 and inoperable SCF or Wireless Site in order that the Licensee may apply for approval of the SCF or Wireless Site in accordance with Laws. In the event that the Licensee elects to apply for approval of the unauthorized SCF or Wireless Site in accordance with this Section, any application for approval shall be processed as if the SCF or Wireless Site was never established and there shall be no presumption or assumption that the SCF or Wireless Site 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 an unauthorized SCF or Wireless Site is denied, the Licensee shall remove the SCF or Wireless Site within sixty (60) days of the date of the Licensor's denial of the application. In the event that the Licensee's application for approval of an unauthorized SCF or Wireless Site is approved, Licensee must pay all required fees for a new Wireless Site that have not otherwise already been paid, plus interest at the rate of two percent (2%) per annum on the required fees from the date of the original installation.

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 ten (10) years from the Effective Date (the "Term"), unless renewed as herein provided in Paragraph 3.2. The term of each Site Supplement shall be concurrent with the term of this Agreement and any extension thereof; provided, however that the minimum term of a Site Supplement shall be five (5) years, so that should the Term of this Agreement expire before the end of any five (5) year Site Supplement term, this Agreement shall remain in effect only with respect to any Site Supplement through the end of such Site Supplement's term.

3.2. Renewal. Unless earlier terminated by either party pursuant to the provisions of this Agreement, the Licensee may request a renewal of this Agreement, by providing sixty (60) days written notice of the intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for up to two (2) successive terms of five (5) years each, 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 as requested, the Licensor shall provide written notification to the Licensee at least one-hundred and eighty (180) days 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 SCFs. Upon expiration or non-renewal of this Agreement, within ninety (90) days of the expiration of the then-current Term, the Licensee must remove its SCFs installed within the ROW, or alternatively, sell the same to a qualified buyer consistent with applicable Law.

3.3. Licensee Cancellation. Licensee may cancel this Agreement or any Site Supplement before the date of expiration by providing the Licensor with thirty (30) days express written notice of cancellation. Any prepaid Pole Attachment Fees shall be retained by Licensor. This Agreement and all Site Supplements may only be cancelled or terminated as provided in this Agreement or any Site Supplement.

3.4. 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 six (6) or more consecutive months, the Equipment on such Municipal Facility or the Equipment and Licensee-Owned Facilities shall be removed at the expense of Licensee. In the event Licensee is unable or refuses to remove such Equipment within thirty

(30) days of Licensor's request, then Licensee shall be deemed to have abandoned its Equipment and Licensor may remove such Equipment at Licensee's cost. In no event may Licensee abandon in place any of its SCFs installed in or on the ROW, unless written consent of the Licensor is obtained and ownership of such Equipment is transferred to Licensor. Any Equipment, including appurtenances to the SCF, cable conduit, meters, or any other component of the abandoned Equipment, that is abandoned by Licensee under the terms of this paragraph shall become the property of Licensor, but Licensee shall remain liable for any costs of removal of such abandoned equipment.

4. Fees and Charges. Licensee shall be solely responsible for the payment to Licensor 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 Site Supplement, Licensee shall pay to Licensor annual fees as set forth in Licensor's published rates, fees, and charges then in effect. The annual fees shall be the applicable "Wireless Pole Attachment Fee" for each attachment to a Municipal Facility and shall be valid from January 1 to December 31. The full annual fee for each Attachment shall be due for each attachment for any portion of the calendar year (*i.e.,* the full amount of the annual fee shall be due for an Attachment completed on November 1 of a particular calendar year). In the event any Law provides Licensee the right to use the Municipal Facilities at an annual rate less than the rate set forth herein, the annual Wireless Pole Attachment Fee shall be reduced to such amount on the next anniversary of the Commencement Date (or earlier if required by such Law) for all existing and new Site Supplements. In such event, the Licensor shall update its applicable published annual fees for the next calendar year. The annual Pole Attachment Fee shall not apply to or be charged for attachments to third- party Facilities or to Licensee's proprietary poles in the ROW. For the purposes of the year 2020 only, the Wireless Pole Attachment Fee for each Attachment to a Municipal Facility shall be $200 per Attachment.

(b) Fee Payment. The Pole Attachment Fee is non-refundable. Licensor shall invoice Licensee annually for all Pole Attachment Fees, no later than October 31. The invoice shall set forth the total number of Poles on which Licensee has been issued a Site Supplement during the annual period, including all previously authorized and active Site Supplements. Invoices for any Site Supplements issued during the course of a calendar year shall be provided to Licensee as necessary for attachments installed after the annual invoice date. Licensor agrees to provide to Licensee a completed, current version of Internal Revenue Service Form W-9, or equivalent.

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

4.3. Utilities and Electric Meter. Licensee will be responsible for telephone, cable, broadband, electric, and any other utility service used or consumed by the Licensee in connection with using its Equipment. In no event will Licensee secure its utilities by sub- metering from Licensor. Licensee shall pay all charges for any electricity furnished by Licensor and for charges for furnishing electric service to the Equipment. When the Equipment requires an electric meter, as determined by Licensor, the Licensee shall install or cause to be installed a separate electric meter for the Equipment on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet, or as otherwise may be required by Licensor's Public Works Department. Licensee will install electric facilities which are inconspicuous as reasonably possible and yet consistent with electric code installation requirements.

4.4. Payments Made. All fees and/or additional payments shall be payable to Licensor at the address provided in Paragraph 19 of this Agreement for Licensor; or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

4.5 Default for Nonpayment. Nonpayment of any amount due under this Agreement ninety (90) days from the date of Licensee's receipt of written notice from Licensor indicating a failure to make timely payment shall constitute a material default under this Agreement.

5. Permits. No payment is collected under this Agreement for any Permit required to be issued in connection with the installation of Equipment at any Municipal Facility. However, to the extent not inconsistent with any applicable Law, all of the Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the Evans Municipal Code. At the time of application for Site Supplements to install the Equipment under this Agreement, Licensee must apply for, obtain, and pay the generally applicable fees for all Permits 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 Permits. Licensee must also apply for any building Permits required for installation of the Equipment. As part of Licensee's application for a Site Supplement, Licensee shall provide to the City all applicable Colorado Department of Transportation ("CDOT") permits or approvals, and/or third party attachment agreements, prior to the City's issuance of a ROW Permit. Execution of this Agreement or any Site Supplement does not constitute the issuance of a Permit.

6. Design and Make Ready Work Requirements.

6.1. Design Standards for Wireless Communication Facilities. Every Wireless Communication Facility installed in accordance with this Agreement must comply with the standards described in the published City of Evans Wireless Communication Facility Design Standards ("Standards") as found in the Municipal Code, whichever is updated most recently prior to the filing of the application for the Site Supplements that will covered by this Agreement. Modifications to the Standards for a Site Supplement may be proposed by the Licensee by the submission of an alternative design drawing or illustration to the Community Development Director or his or her designee ("Director") which drawing or illustration shall clearly identify the differences between the Standards and the proposed alternative design.

Where the Director finds such submitted alternative design presents a *de minimus* or nominal visual impact when compared to the Standards, the Director may approve such alternative design which approval shall be evidenced by written acknowledgment signed by the Director and affixed to the particular Site Supplement. The Director shall retain the discretion to deny a proposed alternative design where the Director finds the proposed design to be more visually or aesthetically impactful than the Standards, at the Director's discretion, the Director may submit the proposed alternative design illustrations to the City Manager for an administrative determination that the proposed design is, or is not, more visually or aesthetically impactful than the Standards.

6.2. Make Ready Work. Licensee shall be responsible for all make ready costs incurred by Licensor in preparing any Licensor-owned structure for an attachment by Licensee. 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 needs to be replaced to accommodate the Equipment, then Licensee shall pay all costs related to replacing the Licensor-Owned pole, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer to the Replacement Pole of the streetlight fixtures, streetlight, traffic signal, and/or other items attached to the existing Licensor-Owned pole, and removal and salvage to the Licensor of the existing Licensor- Owned pole. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Licensor-Owned pole and the Replacement Pole. The installation or attachment of the Equipment using the Replacement Pole shall be at Licensee's sole cost and expense.

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

7.1. Damage to Property. If in the exercise of the rights granted by this Agreement Licensee damages or disturbs the surface or subsurface of any ROW or adjoining property, pole, streetlight fixture, traffic signal, fiber, landscaping, or other public improvement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor and all affected property owners, repair the damage or disturbance within thirty (30) days. 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. Public Emergency. In the event of an emergency or to protect the public health or safety, prior to the Licensor 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. In such case, Licensor will contact Licensee at _____ to request immediate deactivation. Such contact number must be staffed 24 hours every day of the week with a live answering service. Licensee shall keep such contact information updated with Licensor. If Licensee refuses to or fails to act within two (2) hours of such notice from Licensor, Licensee's consent will be deemed

given to Licensor to proceed as reasonably necessary to protect public and utility personnel safety in Licensor's sole discretion.

7.3. Reserved.

7.4. Non-exclusiveness. Subject to Paragraph 7.6(d), the rights and privileges granted to Licensee under this Agreement, and each Site Supplement described herein, are nonexclusive; except that, once Licensee places a Wireless Site in the ROW, Licensor shall not control Wireless Sites, which include without limitation Licensee equipment and sites licensed by Licensee, and will not permit another carrier on the same Site unless Licensor receives confirmation from Licensee and the subsequent carrier that the subsequent carrier will not interfere with the Licensee's existing Wireless Site.

7.5. 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, or Licensor traffic, public safety, or other communications signal equipment existing at the time of installation of the Equipment or at any time thereafter.

(b) Existing Uses. Licensee shall not interfere in any manner with the existing uses of Licensor property including ROW, 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 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. However, Licensor agrees that Licensee and/or any other tenants, licensees, or users of the ROW who currently have or in the future take possession of space within the ROW will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment of Licensee.

(d) Interference with Public Safety Communication. Licensee shall not interfere in any manner with current or future Licensor or other governmental public safety communication. Without limiting any other rights or remedies, if interference to Licensor's or other governmental public safety communication occurs and continues for a period in excess of thirty-six (36) hours following notice to the interfering Party via telephone the interfering Party shall be required to reduce

power or cease operations of the interfering equipment until the interference is cured under reasonable commercial standards.

(e) Interference with Non-Public Safety Systems. Without limiting any other rights or remedies, if interference to non-public safety communication systems of the Licensor or other governmental entity occurs and continues for a period in excess of forty-eight (48) hours following notice to the interfering Party via telephone, the interfering Party shall be required to reduce power or cease operations of the interfering equipment until the interference is cured under reasonable commercial standards.

(f) Telephonic Notice for Purposes of Remedying Interference Issues. Telephonic notice, for purposes of this Section 7.5, shall be made to Licensee's Network Operations Center at **[Insert phone number]** or to Licensor at the Public Works Department at (970) 475-1111. Licensee's contact number must be staffed 24 hours every day of the week with a live answering service. Licensee shall keep such contact information updated with Licensor.

(g) Remedies. 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. In no event shall the Licensee be entitled to damages or other monetary award.

7.6. Adjacent Property Owner Notices.

(a) Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of customers, Licensee shall give reasonable advance notice to private residential property owners of construction work on or in adjacent rights-of-way, as provided in this section. "Construction work" shall include excavation, boring, assembly, rehabilitation, renovation, remodeling or improvement of any structure or facility in the public Right-of-Way or adjacent to a sidewalk beside the public Right-of-Way, including associated landscaping, parking, equipment or furnishings for such work.

(b) In particular, the following requirements shall apply to nonemergency activity in public Rights-of-Ways when the activity adjoins residentially-zoned property or property shown in the Weld County Assessor's Records as "residential," and will not be completed and restored in a period of two weeks or less.

1. Licensee shall either:

a. At least seventy-two (72) hours before commencement of any work in the public ROW, (i) post and maintain a notice that is located at the beginning and end points of the activity, and (ii) deliver notice

to each address in the area of the activity and within one hundred seventy-five feet of its boundaries; or

b. At least fifteen calendar days before commencement of any work in the public ROW, provide written notice individually to each address in the area of the public ROW work and within 175 linear feet of its boundaries.

2. For good cause, Licensor may require Licensee to employ a combination of the notices required by subsection (b)(1) of this section.

3. The notices required by subsection (b)(1) of this section shall include the name, telephone number, and address of the owner and use permittee, a description of the work to be performed, the duration of the work, and the name, address, and telephone number of a person who will provide information to and receive comments from any member of the public concerning the work. Such contact number must be staffed 24 hours every day of the week with a live answering service. Licensee shall keep such contact information updated with Licensor. Posted notices shall be in a format and size acceptable to Licensor.

7.7. Radio frequency emissions. Licensee hereby warrants and agrees that all equipment installed within the public right-of-way will be environmentally safe and non-harmful to public health and safety. All of Licensee's equipment shall meet all state and federal regulations related to the emission of radio frequency waves and electromagnetic frequencies. Licensee may not install any equipment that will cause adverse health impacts.

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 Licensor's negligence or willful 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, subject to Section 7. Any claims by Licensee must be processed through Licensor's Risk Management department.

9. Title to Equipment.

9.1. Title to the Equipment. Title to, responsibility for, and control of the Equipment, exclusive of the Municipal Facility (original or replacement) used for support, and including ground mounted equipment, shall remain with Licensee or any approved sub- licensee and shall constitute Licensee's or sub-licensee's personal property and Equipment, and not fixtures or improvements attached to the land. Licensee shall be responsible for all Equipment installed under this Agreement even if Licensee does not own legal title to such equipment (i.e., the Equipment is owned by a sublicensee or customer of Licensee), and acknowledges and agrees that Licensor may take any actions authorized under this Agreement with respect to such Equipment, even if legal title for such Equipment is not vested in Licensee.

9.2. No Ownership in Licensor Property. Neither this Agreement, any Site Supplement, 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 Site Supplement, 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 applicable Laws governing the use of the Licensor poles for Licensee's intended purpose.

9.4. Licensor's Rights. The parties agree that this Agreement does not in any way limit Licensor's right to locate, operate, maintain, or remove its poles in a manner that will best enable it to fulfill its service requirements.

10. Maintenance and Repair. Subject to Paragraph 7.3, Licensor shall maintain and keep the Municipal Facility containing Equipment in good condition and in accordance with Licensor's standard maintenance requirements, at its sole cost and expense. Licensee shall keep the Equipment and other improvements by Licensee on the Municipal Facility, if any, 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 applicable 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 Licensor, its employees, officers, elected officials, agents, and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs

or expenses arising from the installation, use, operation, maintenance, repair, or removal of the SCFs, any of its or its customers' activities on any Wireless Site, or the Licensee's breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the Licensor or an Indemnified Party. Upon the filing with the Licensor by anyone of a claim for damages arising out of incidents for which Licensee herein agrees to indemnify and hold the Licensor harmless, the Licensor shall notify Licensee of such claim and in the event that Licensee does not settle or compromise such claim, then Licensee shall undertake the legal defense of such claim on behalf of Licensee and Licensor. It is specifically agreed, however, that the Licensor at its own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Licensor for any cause for which Licensee is liable shall be conclusive against Licensee as to liability and amount upon the expiration of the time for appeal. Licensee's indemnification obligations set forth in this Paragraph 12 shall survive termination of this Agreement.

12.2 The Licensor shall give the Licensee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any SCFs. In the event such claim arises, the Licensor or any other Indemnified Party shall tender the defense thereof to the Licensee and the Licensee shall consult and cooperate with the Licensor's Attorney's Office while conducting its defense. The 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 the Licensor and the counsel selected by Licensee to represent the Licensor, the Licensee shall pay for all reasonable expenses incurred by the Licensor as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the Licensor shall select its own counsel and any other experts or consultants, subject to the Licensee's prior approval. The 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 the Licensor's Attorney or his/her assistants or any employees of the Licensor or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Licensor by the Licensee.

12.4 Licensor will not 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.

12.5 In consideration for the rights granted under this Agreement, Licensee waives all claims, demands, causes of action, and rights it may assert against Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Equipment, or any loss or degradation of service resulting from the installation, operation, maintenance, or malfunction of Equipment regardless of cause.

13. Insurance Requirements.

13.1. Licensee's Insurance. Licensee must procure and maintain insurance in the amounts and form specified in an attached Exhibit to the MLA throughout the term of this Agreement. Within 30 days of execution of this Agreement, Licensee shall submit a Certificate of Insurance to Licensor, which Certificate shall comply with the insurance requirements set forth in this Agreement. Upon renewal of any of Licensee's insurance coverages, Licensee shall provide Licensor with a copy of its then-current Certificate of Insurance, no less than annually.

13.2. Certificates. 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 term 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.

14. Assignment/Sublicensing.

14.1. Assignment. This Agreement and each License granted herein is personal to Licensee and for Licensee's use only. Subject to Paragraph 14.3 below, the related rights and privileges may not be assigned or otherwise transferred without the express written consent of Licensor, which consent shall not be unreasonably withheld, conditioned, or delayed. 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 all without prejudicing any other right or remedy of Licensor under this Agreement or any applicable law. 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.

14.2. Sublicensing. In the event that Licensee intends to provide access to the Equipment to a customer or sublicensee, or installs Equipment owned by a customer or sublicensee, through lease, sublicense, or similar agreement, and notwithstanding the terms of any such leases, sublicenses, or agreements, Licensee shall remain fully liable under this Agreement and shall not be released from performing all terms, covenants, or conditions of this Agreement with respect to any leases, sublicenses, or similar agreements. Licensee shall require in any agreements with a customer or sublicensee that its customer or sublicensee agree to be subject to all terms, conditions, and obligations of this Agreement as they may relate to the customer's or sublicensee's use of the Equipment and that the customer or sublicensee shall further comply with all Applicable Laws. Notwithstanding any terms of any lease, sublicense, or agreement, Licensee (including its contractors and agents) will be the responsible party for all of the operation, repair, and maintenance of all Equipment

licensed under this Agreement, and Licensee shall be solely responsible to Licensor for compliance with this Agreement and all applicable laws and permits. Licensee agrees that it shall provide to Licensor at Licensor's request any contractual agreements between Licensee and any customer or sublicensee related to Licensee's installation of Equipment under this License for or on behalf of any such customer or sublicensee, as well as contact information for any customer or sublicensee that holds title to any Equipment subject to this Agreement. Licensee hereby acknowledges and understates that, if necessary, Licensor may take all necessary actions with respect to the Equipment to enforce the terms of this Agreement, even if legal title for such Equipment or SCF is not vested with Licensee. Notwithstanding any provisions of paragraph 12 to the contrary, Licensee shall defend, indemnify, and hold harmless Licensor against any and all claims by its sublicensee or customer for any damages to Equipment owned by sublicensee or customers of Licensee that may arise out of Licensor's actions to enforce the terms of this Agreement.

14.3. Notwithstanding anything to the contrary in this Section 14, this Agreement and/or any Site Supplement and/or Permit approved by the Licensor may be sold, assigned or transferred by Licensee, without advance notice to or the consent of Licensor, 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 is currently operating in the City of Evans and is in full compliance with all obligations to the Licensor; or (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 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 material violation of a local permit. Licensee shall provide written notice to Licensor within thirty (30) days of Licensee completing a transaction with an entity as covered in subsections (i) through (iii)) of this Paragraph and ninety (90) days written notice to the Licensor of a transaction covered in subsection (iv) and (v).

15. Default.

15.1. Default of Licensee.

(a) 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 thirty (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.

(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.

16. Termination/Revocation. 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 Site Supplements and the Agreement as a whole, or any Site Supplement 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. If Licensee undertakes any such performance on Licensor's behalf and Licensor does not pay Licensee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, Licensee may offset the full undisputed amount due against all fees due and owing to Licensor under this Agreement until the full undisputed amount is fully reimbursed to Licensee.

17. 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 with the exception that Licensor waives any requirement for Licensee to assume or reject this Agreement earlier than prior to confirmation of a plan. 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.

18. Surrender. Within ninety (90) days of the expiration of the Supplement Term of any Site Supplement, 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. For any removal or relocation of Equipment under this paragraph, Licensee must follow the procedures and requirements for obtaining ROW work permits under the Evans Municipal Code. If Licensee fails to remove the Equipment as required by this Section, such Equipment shall be deemed abandoned as set forth in Paragraph 3.4 above.

(a) Security. The Licensee shall provide security in the form of cash, a surety bond, or irrevocable letter of credit, the form of which shall be left to the discretion of the Community Development Director. The amount of the security will generally be in an amount equal to one-hundred percent (100%) of the estimated cost of the removal of abandoned Equipment, and an additional ten percent (10%) of that amount to cover administrative costs required to ensure compliance with the requirements of this Agreement. At the conclusion of this Agreement, the security shall be released.

19. 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:

Licensee: _____
_____
_____
_____

Licensor: City of Evans
Attn: City Manager
1100 37th Street
Evans, CO 80620-2036

With copy to: Krob Law Office, LLC
8400 E. Prentice Avenue, Penthouse
Greenwood Village, CO 80111

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. 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.

19.1. Emergency Contact. As set forth above, 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: _____. The Licensee shall be obligated to maintain a current emergency contact number with the Licensor and notify the Licensor within 24 hours following any changes. Licensee understands and agrees that the requirement of maintaining updated contact information is a material term of this Agreement. Licensee agrees that its contact number must be staffed 24 hours every day of the week with a live answering service. Licensee shall keep such contact information updated with Licensor.

20. Miscellaneous.

20.1. 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.

20.2. 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.

20.3. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Colorado, and applicable federal Law. Venue for any dispute related to this Agreement shall be in the County of Larimer, State of Colorado or in federal district court.

20.4. Appropriation. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Evans Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

20.5. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado

Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

20.6. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, 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. Licensor hereby designates, and authorizes, the Licensor's Director of the Department of Water & Power, or his or her or designee to execute all Site Supplements entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

20.7. 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.

20.8. Force Majeure. With respect to any provisions of this Agreement, 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.

20.9. 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. Licensor makes no express or implied warranties and hereby disclaims any such warranties with regard to Licensor's poles, and Licensor makes no other express or implied warranties, except to the extent expressly and unambiguously set forth in this agreement. Licensor expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

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

20.11. 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.

20.12. 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 _____, 20_____ (the "Execution Date").

CITY OF EVANS, COLORADO

By:_____
Title:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

LICENSEE
_____,

By:_____
Title:_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20_____, by _____, on behalf of _____.

_____
Notary Public in and for the State of _____;
My Commission Expires: _____

Exhibit A – Small Cell Facility Design Standards

1. **Non-Conforming Uses and Buildings**. SCF cannot be constructed on structures or buildings established as legal nonconforming.

2. **Sizes, Heights, and Quantities**
   (a) A small-cell telecommunications facility in a City street, right-of-way or electrical utility easement shall be exempt from the minimum setback requirements.
   (b) Heights
      i. The SCF shall not be more than ten feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 600 feet of the pole or structure.
      ii. Any such facility shall in no case be higher than forty (40) feet, unless such pole is already existing at a greater height.
      iii. Any transmission equipment placed on an existing tower shall not extend more than ten (10) feet above such pole. Small cell facilities attached to an electric distribution alternative tower structure may be located at the minimum height necessary to provide the safety clearance required by the electric utility if applicable.

3. **Noise.** Noise generated on the site must not exceed the levels permitted by the Colorado Revised Statutes. A SCF owner or operator shall be permitted to exceed noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the City.

4. **Design, Spacing and Location Standards**
   (a) Any stand-alone SCF shall not block windows or any building entrances. To the extent possible, poles shall be located at mid-blocks, away from intersections. All poles shall be located so as to ensure proper sight-distance lines.
   (b) The pole design in the City right-of-way shall match the color, aesthetics, spacing, and architectural characteristics of existing streetlights installed adjacent to the pole.
   (c) Banner arms and luminaries are prohibited. A waiver of this prohibition may be granted upon a showing that an alternative design is technically infeasible.
   (d) Wireless communications facilities and equipment should not be installed within the dripline of any tree.
   (e) Pole caissons should be circular in nature and designed to minimize impact of adjacent and future utilities. Concrete must follow Colorado Department of Transportation (CDOT) Road & Bridge Specification for applicable mix design. All designs must be stamped and signed by a registered Professional Engineer in the State of Colorado.
   (f) Spacing.

i. No new freestanding SCF shall be within 1,000 feet of another freestanding SCF. These separation requirements do not apply to attachments made to existing alternative tower structures.

ii. The community development director may exempt an applicant from these separation requirements if (1) the applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or (2) the director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and, the height of existing structures in the vicinity, that placement of a SCF at a distance less than 600 feet from another SCF will meet the intent of reducing visibility and visual clutter of small cell facilities to the extent possible.

(g) Non-interference.

i. The alternative tower structure shall comply with the Americans with Disabilities Act (ADA) and every other local, state, and federal law and regulations

ii. The alternative tower structure 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.

iii. No alternative tower structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with its use by the county, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare of the public.

(h) All SCF equipment and appurtenances shall be concealed.

i. All SCF equipment and appurtenances shall be housed internally with regard to the pole or alternative tower structure which hosts the antennas.

ii. Electric metering structures and/or meters shall not be visible from the exterior of the pole or alternative tower structure which hosts the antennae where the pole or alternative tower structure is located. This requirement may be wholly or partially waived by the Community Development Director where it is technically infeasible to place all or part of a meter internally.

iii. Ground Mounted Equipment shall be designed such that any ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the director. Ground mounted equipment shall be flush-to-grade and housed in an underground equipment vault, except where technically infeasible. Ground-based equipment may

be located within the rights-of-way on a case-by-case basis, accounting for impacts of such equipment within the right-of- way or the health, safety, and welfare of the public.

(i) Ground level equipment and buildings and the tower base shall be screened. The standards for equipment and buildings are as follows:

i. The maximum floor area is 350 square feet and the maximum height is 12 feet.

ii. Equipment mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof mounted antenna may also be located within the building on which the antenna is mounted, subject to generally accepted engineering practices. Equipment, buildings, antennas, and related equipment shall occupy no more than 25 percent of the total roof area of a building

(j) Residential Zones. Towers shall be set back from property lines a distance equal to 300 percent of tower height; provided, however, that a lesser setback may be permitted if the Community Development Director determines that:

i. There are unusual geographical limitations that justify the reduced setback;

ii. The setback is not less than a distance equal to 100 percent of tower height; and

iii. The small cell facility support pole or tower is camouflaged or otherwise adapted to be compatible with the surrounding area.

(k) All Other Zones. In all zones that are not residential zones, towers shall comply with the minimum setback requirements of the area in which they are located, except that if property in such non-residential zone is adjacent to property in the residential zone, a tower shall be setback a distance of no less than 110 percent of the tower height from the property line abutting such residential property.

5. **Co-location**

(a) To minimize adverse visual impacts associated with the proliferation of towers, the City encourages co-location of antennas by more than one carrier on existing towers or structures.

(b) An existing tower or base station may be modified or reconstructed to accommodate the co-location of an additional antenna. Modification of an existing tower or base station that is not an eligible facility structure under section 14.44 to accommodate additional antennas shall be permitted in all zone districts, subject to the requirements of the zone district and the following criteria:

i. An existing tower may be modified or rebuilt to a taller height, not to exceed twenty feet over the tower's existing height, to accommodate the co-location of an additional antenna. The tower as modified shall comply with the other provisions of this chapter

ii. A tower which is being modified to accommodate the co-location of an additional antenna may be moved to a different location on the same property within 50 feet of its existing location so long as it remains within the same zone district. After the tower is rebuilt to accommodate co-location, only one tower shall remain on the property.

iii. The tower, as modified, shall comply with the provisions of this chapter in all respects.

iv. The applicant for modification of a tower and co-location of an antenna shall follow the approval process as set forth in this title for the zone district in which the tower is located.

(c) No SCF owner, operator, lessee, or any officer or employee thereof, shall act to exclude any SCF provider from using the same facility, building, structure or location. SCF owners or lessees or officers or employees thereof shall cooperate in good faith to achieve co-location of SCFs and equipment with other SCF providers. Upon request by the City, the owner or operator shall provide evidence establishing why co-location is not reasonably feasible. The City shall not attempt to affect fee negotiations between private parties concerning co-location. If a personal wireless services provider attempts to co-locate a facility on an existing or approved facility or location and the parties cannot reach agreement concerning the co-location, the City may require a third party technical study at the expense of either or both parties to resolve the dispute.

(d) Co-location on Existing Structures.

i. A SCF proposed to be co-located on an existing structure shall not be required to submit a site development plan and shall be processed as a permitted use.

ii. If the existing structure has been previously approved as a permitted use, such SCF co-location shall be approved as a permitted use and no amendment of such use shall be required.

(e) Co-location on New Towers.

i. In order to reduce the number of towers needed in the City in the future, every new tower shall be designed to accommodate antenna for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons,

or unless the Community Development Director determines that a tower for only one user is more appropriate at a specified location.

ii. Unless the Community Development Direction determines that co-location is not feasible, the site plan for every new tower shall delineate an area near the base of the tower to be used for the placement of additional equipment or buildings for other users. The site plan for towers in excess of 100 feet shall propose space for two or more other comparable tower users, while the site plan for towers under 100 feet shall propose space for one other comparable tower user.

iii. The City may deny an application to construct a new tower if the applicant has not demonstrated a good faith effort to co-locate the antenna on an existing structure or tower.

(f) Co-Location in All Zones. The applicant shall demonstrate that any new antenna cannot be reasonably co-located on an existing structure.

(g) Federal Requirements. All towers, SCF, and antennas shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers, communications facilities, and antennas. If such standards and regulations are changed, then the owners of the towers, communications facilities, and antennas governed by this section shall bring such towers, communications facilities, and antennas into compliance with such revised standards and regulations within three months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers, communications facilities, and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower, SCF, or antenna at the owner's expense.