

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the Effective Date), is entered into by the City of Longmont, Colorado (“Landlord”), a Colorado home rule municipality and _____, a [TYPE OF ENTITY] (“Tenant”) with its principal offices located at _____.

BACKGROUND

Landlord is the owner of land and facilities located at [insert street address] in the City of Longmont, Boulder County, State of Colorado (the “Property”), as further described on Exhibit A. A [describe facility-water tank, tower, building, etc.] (“City Facility_____”) is located on the Property. Tenant is a wireless communications provider, and permitted, licensed or otherwise authorized by the applicable federal or state governmental authority to operate in some areas of the City of Longmont. [OR: Tenant is a (describe the nature of the business).] Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the Property and/or City Facility as described below in order to enable Tenant to erect, operate and maintain certain communication equipment of Tenant in connection with its wireless communications business.

1. RIGHT TO LEASE.

(a) Landlord grants to Tenant the right to lease a portion of the Property consisting of [MODIFY AS APPROPRIATE TO DESCRIBE LEASED SPACE - WATER TANK, TOWER, BUILDING, ETC] (i) a rooftop area space of approximately ___ square feet; (ii) ground space area of approximately ___ square feet; and (iii) space on the City Facility together with such easements as are necessary for the installation of antennas, cables and other ancillary facilities as further described on Exhibit B (collectively, the “Leased Premises”).

[IF THE TENANT NEEDS TO GAIN ACCESS TO PERFORM TESTS BEFORE MAKING A FINAL DECISION TO LEASE THE PROPERTY, INSERT THE FOLLOWING]

(b) Prior to its decision to notify Landlord of its intent to commence the initial term of this Agreement, for a period of one hundred and eighty (180) days from the Effective Date, Landlord grants Tenant, its agents, engineers, surveyors and other representatives, the right to enter upon the Property to inspect, examine, conduct non-invasive drainage testing, radio frequency testing and other engineering tests or studies related to the communications services (collectively, the “Tests”). Investigations and Tests that create noise audible to any occupants of the City Facility or that physically alter the City Facility shall be pre-approved in writing by Landlord with at least 5 business days notice prior to the commencement of the investigation or tests. At its sole cost Tenant shall apply for and obtain licenses, permits, approvals, or other permission required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Leased Premises and include without limitation applications for zoning approval and construction permits (collectively, the “Government Approvals”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord’s title to the Property and the feasibility or suitability of the

Property for Tenant's permitted use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Term Commencement Date (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims of Landlord or any third parties arising directly out of Tenant's Tests.

(c) Assumption of the Risk. Landlord states and Tenant agrees that the Property is not designed, used or maintained for the Tests related to a site investigation. The Property is maintained and used for above ground [INSERT DESCRIPTION, AS APPLICABLE] activities. Tenant and Tenant contractors shall have professional experience and knowledge in performing any Tests. Such Tests may be inherently dangerous and unsafe. The dangers include but are not limited to buried utilities, improvements, hazardous waste, or concealed features, and other unknown hazards. For the avoidance of all doubt, Landlord shall not be responsible for the actions of Tenant's employees or contractors while they are on the Property.

(d) In consideration of Landlord granting the Tenant the right to enter onto the Property and undertake the Tests described in subsection (b) above, Tenant shall pay Landlord the sum of _____ dollars (\$ _____) upon the execution of this Agreement.

(e) Prior to the expiration of the one hundred eighty (180) day period described in subsection (b) above, Tenant may give written notice to Landlord of its intent to commence the lease term for the Leased Premises. If Tenant does not notify Landlord in writing of its intent to commence the lease term within such time period, this Agreement shall terminate and the parties will have no further liability to each other, except as provided in subsections (b), (c) and (d).

2. PERMITTED USE.

(a) Prior to performing any work, Tenant shall provide an engineering analysis of structural support capacity of the City Facility to be performed by a Colorado registered structural engineer. The Leased Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance and operation of communication fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Leased Premises (collectively, the "Communication Facilities"). Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet in the locations depicted on Exhibit B. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facilities on the Property. [IF ROOFTOP LEASE, INSERT THE FOLLOWING] Tenant must provide Landlord-approved walk pads and safety rails to all Tenant Communications Facilities located on the rooftop. Further, Tenant acknowledges that in no event or circumstance shall the Communication Facilities penetrate, or the installations thereof result in the penetration of the roof

or façade of the City Facility. Tenant shall be responsible for the cost of any repairs for any damage caused to the City Facility or any other part of the Property during installation, use, maintenance and removal of Tenant’s Communication Facilities.

(b) Prior to any alteration or modification to the Communication Facilities (excluding routine maintenance, repairs, the like-kind replacement of the Communication Facilities, or any modifications to the interior of the equipment shelter or items housed therein), Tenant shall submit copies of the site plan, floor plans, sections, elevations, structural plans, and specifications to Landlord for prior approval. Landlord shall give such written approval or provide Tenant with its requirements for changes upon completion of the development application review process.

(c) Smoking; Solicitations; Dangerous Activities. The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises. Tenant shall not permit dangerous activities on the Leased Premises.

3. TERM.

(a) The initial term of this Agreement shall be ____ (__) years commencing upon [INSERT, IF PRIOR TESTING IS REQUIRED] the date Tenant provides written notice to Landlord pursuant to Section 1(e) of its intent to commence the lease term for the Leased Premises [INSERT, IF NO PRIOR TESTING IS REQUIRED] the Effective Date. Landlord and Tenant agree that they shall acknowledge in writing the Term Commencement Date. The Initial Term will terminate on the fifth (5th) annual anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for ____ (__) additional ____ (__) year terms (the “Extension Term”), upon the same terms and conditions unless the Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term or any subsequent Extension Term.

(c) The Initial Term and any Extension Terms are collectively referred to as the “Term”.

4. RENT.

(a) Tenant shall pay to Landlord an annual rental in the amount _____ Dollars (\$_____), (Rent), at the address set forth below. The first rental payment is prorated to the end of the current calendar year, shall be in the amount of _____ (\$____) Dollars payable within within fifteen (15) days of the execution of this Agreement. Annual payments are due on or before the first (1st) day of January in each subsequent year. Rent shall be payable to Landlord at City of Longmont, _____; Attention: _____.

(b) The Rent shall increase five percent (5%) annually on the second full year after the Term Commencement Date.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file any required applications to obtain Government Approvals for Tenant's permitted use under this Agreement and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the Government Approvals required for the provision of communication services.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. In the event Tenant determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Leased Premises will not permit the use granted under this Agreement, Tenant will have the right to terminate this Agreement upon thirty (30) days written notice to Landlord.

6. TERMINATION. This Agreement may be terminated as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Tenant upon six (6) months prior written notice to Landlord, if Tenant is unable to obtain, or maintain, any required Government Approval(s) necessary for the construction or operation of the Communication Facilities as now and hereafter intended by Tenant or if Tenant determines in its reasonable discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to two (2) years' Rent, at the then current rate; provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Sections 5(b) Approvals, 6(a) Termination, 6(b) Termination, 11(c) Hazardous Substances, 18 Condemnation, 19 Casualty or 24(j) Severability of this Agreement.

(d) by Landlord if Tenant does not keep a Letter of Credit in effect as required by Section 23.

(f) by Landlord if any government body, other than Landlord, passes an ordinance, law or regulation that would interfere or render impossible performance of this Agreement. If permissible, Landlord shall provide Tenant with ninety (90) days' notice to surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against the Landlord for any loss or damage.

(g) This Agreement shall terminate automatically if events occur and notice is provided as described in Sections 18 and 19 of this Agreement.

(i) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, perils and hazards and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

7. INSURANCE.

(a) During the term of the Agreement, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.

(ii) Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One and One-half Million Dollars (\$1,500,000.00) as the combined single limit for each occurrence for bodily injury and property damage.

(iv) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Communication Facilities. Upon completion of the installation of the Communication Facilities, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Communication Facilities. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

(b) All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

(d) All policies, except for worker's compensation policies, shall name Landlord and its officers, boards, commissions, employees, agents and contractors as additional insureds (herein referred to as the "Additional Insureds"). Each policy shall be endorsed to add Additional Insureds hereunder, with respect to the operations of the named insured.

(e) Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Landlord annually during the term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

a. Cancellation of Policies of Insurance. All insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice shall be given to the Risk Manager of the City of Longmont by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

b. Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

c. Deductibles. All insurance policies may be written with deductibles, not to exceed \$50,000.00 unless approved in advance by Landlord. Tenant agrees to indemnify and hold harmless Landlord, the Indemnitees, and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

d. Contractors. Tenant shall require that every one of its contractors and their subcontractors who perform work on the Leased Premises and/or City Facility carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type which Tenant is required to obtain under the terms of this paragraph with appropriate limits of insurance.

e. Review of Limits. Once during each Renewal Term year during the term of this Agreement, Landlord may review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds, Tenant shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

8. INTERFERENCE.

(a) Upon the written request of the Tenant, where there are existing radio frequency user(s) on the Property, the Landlord (to the best of its abilities) will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Leased Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may in any way adversely affect or interfere with the Communication Facilities, the operations of Tenant or the rights of Tenant under this Agreement.

(c) The Tenant's Communications Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission ("FCC"), to any currently leased and operating communications equipment of City, other existing entities on the Property, or adjacent landowners. In the event Tenant's Communications Facilities causes such interference, Tenant shall take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Communications Facilities, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Tenant's Communications Facilities comply with all federal requirements for RF emissions, and that Tenant's Communications Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property.

(e) Tenant understands that no use of the Leased Premises and/or Property will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Notwithstanding any other provision to the contrary, Tenant's activities shall not interfere with the peaceful enjoyment of the Leased Premises by Landlord's operations at the

Property or endanger the health or safety of Landlords's employees and/or tenants, lessees or licensees.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and 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 Communication Facilities or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

10. WARRANTIES.

Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

11. HAZARDOUS SUBSTANCES.

(a) Tenant represents and warrants that its use of the Leased Premises and/or City Facility herein will not generate any Hazardous Substance, and it will not store or dispose on the Leased Premises and/or City Facility nor transport to or over the Leased Premises and/or City Facility any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Communications Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees or agents. Landlord shall be responsible for any release of a Hazardous Substance caused by Landlord, including any damage, loss, or expense or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(b) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority.

(c) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant's use, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

(d) Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant's Communications Facilities so long as it does so in full compliance with all applicable laws.

12. ACCESS.

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hours per day, seven (7) days per week pedestrian and vehicular access to and over the Property, to the Leased Premises, for the installation, maintenance and operation of the Communication Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible, however shall be performed by Tenant on a non-holiday week day from 7:00 am to 10:00 pm. Tenant shall immediately call Landlord at [REDACTED] to report any emergency. [IF THE LEASE IS FOR BUILDING ACCESS YOU MAY WANT TO INCLUDE THIS] If access during an emergency necessitates, in the sole discretion of the Landlord, a need for Landlord personnel to access the site to effectuate emergency repairs, Tenant shall be responsible for all costs incurred by the Landlord to facilitate such access. Additionally, Tenant shall provide Landlord monthly entry logs with information describing all vendor, contractor, and/or Tenant technician activity on the leased premises of the City Facility within [REDACTED] days of the completion of the work. Entry logs shall include at a minimum, the date and time the technician arrived, the name of technician performing the work, a description of work performed, and the time the technician left the Leased Premises. Landlord grants to Tenant a license for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both parties either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

(b) Tenant understands and has full knowledge that the City Facility is not designed, used or maintained for recreational or public use, may not be clean and may have unknown or foreign objects on it; and may be unsafe. [IF LEASE IS FOR A ROOFTOP] Tenant and its agents recognize that use of the City Facility rooftop is inherently dangerous. The dangers include but are not limited to variations in surface, wind or weather elements, hidden objects, debris or rocks, the lack of any guard rails and hand rails or an uneven walking surface. Tenant understands and agrees that Landlord has not taken any action to remove, improve, post a sign or warn Tenant in any fashion of a particular danger. Tenant has, as part of its activities pursuant to this Agreement,

requested and has been granted Landlord's permission for access to the rooftop, and Tenant assumes full responsibility for all risks involved.

(c) Security and Invitees: Landlord does not represent that the Property or Leased Premises are safe from theft, injury or damage to Tenant or Tenant's property. Landlord does not represent that locks or security services or equipment, if any, are provided to protect Tenant's safety, property, or Leased Premises. Notwithstanding any provision to the contrary, Landlord is not liable for any lack of security with respect to the Property or Leased Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises.

13. REMOVAL/RESTORATION. All portions of the Communication Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facilities constructed, erected or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within ninety (90) days of the termination of this Agreement, Tenant will remove all of Tenant's improvements and Tenant will restore the Leased Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Any property not removed within ninety (90) days shall be deemed abandoned and Landlord shall have a right to seek compensation through Section 23 of this Agreement.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Leased Premises in good condition. **[INSERT IF THERE ARE GROUND FACILITIES]** Tenant shall maintain the outward appearance of any equipment shelter or other ground equipment and will remove any graffiti that may be drawn on the shelter or equipment by unknown third parties within seven (7) days after it has knowledge of such graffiti. At Tenant's sole expense, any ground facilities shall be fenced, secured and screened to the Landlord's satisfaction, as depicted on Exhibit B. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Notwithstanding any other provision to the contrary and subject to Section 14(d) and 14(g), if applicable, at Landlord's sole discretion, Landlord may at any time examine, inspect and protect the Property and make alterations, renovations, restorations, repairs and or improvements to the Property (collectively Work).

(c) Tenant's installation shall not interfere with Landlord's maintenance and repairs to Landlord's City Facility components near or adjacent to Tenant's installation.

(d) **[IF A CITY BUILDING ROOFTOP IS THE LEASED PREMISES]** Except for emergencies and where practical, Landlord will notify Tenant at least ninety (90) days in advance of the date when the City Facility rooftop is scheduled for maintenance or repairs. If deemed necessary, prior to a maintenance or repair date, Tenant, at its sole expense, must relocate Tenant's equipment on the Leased Premises to another location on the Property, provided Tenant's use of the Property is not interrupted or diminished during the relocation and Tenant is allowed, if necessary, in Tenant's reasonable determination, to place a temporary installation on the Property during any such relocation or maintenance (e.g. cell-on-wheels). Once the maintenance is finished, the Tenant, at its sole expense, shall then replace the antennas, cables and equipment at the same or comparable location.

(f) Tenant shall be responsible for obtaining its own electric source to power Tenant's equipment. All costs associated with the Tenant's electrical requirement shall be at the Tenant's expense. Tenant may be required to secure its own utility metered electric service and will be responsible for permitting the new electric service as well as any line extension costs, metering equipment, and Electric Community Investment Fees. Longmont Power and Communications' Rates and Regulations Governing Electric Service shall be applicable to the Tenant's electric service for either metered or unmetered energy, as applicable, including any associated fees.

(g) Upon ninety (90) days prior written request, Tenant shall, at the sole cost to Tenant, relocate its equipment on a temporary basis to another location on the Property, for the purpose of Landlord performing maintenance, repair or similar work on the Property, provided Tenant's use of the Property is not interrupted or diminished during the relocation and Tenant is allowed, if necessary, in Tenant's reasonable determination, to place a temporary installation on the Property during any such relocation or maintenance (e.g. cell-on-wheels).

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. No such failure, however, except for payment of rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(i). Delay in curing a default, except for payment of rent, will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide access to Leased Premises or cure any interference problem within twenty-four (24) hours after written notice of such default; or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No

such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(i). Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord by Tenant.

16. ASSIGNMENT.

(a) Tenant may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or to the Communications Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. A violation of this section is null and void and unenforceable against Landlord. Notwithstanding the immediately preceding sentences, Tenant may assign its interest under this Agreement and to the Communications Facilities without Landlord's consent but upon at least thirty (30) days prior written notice to Landlord to (a) one or more entities which shall control, be controlled by, or be under common control with, Tenant, or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the Federal Communications Commission in which the Property is located, in connection with any merger, consolidation or reorganization of Tenant.

(b) Effective immediately upon transfer by Landlord of Landlord's interest in the City Facility, Landlord shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the Code), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting the Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized

overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant: _____

If to Landlord: City of Longmont, Colorado

Attention: _____

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

18. CONDEMNATION AND EMINENT DOMAIN.

(a) In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its Equipment, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Property unfit for occupancy or make it impossible for Tenant to conduct its business by the power of eminent domain, this Agreement shall terminate as of the date of taking. Tenant shall immediately surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against Landlord for any loss or damage.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Tenant, its employees, agents or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Communication Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage is not caused by Tenant, its employees, agents or independent contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Tenant shall have no other claims against Landlord for any loss by fire, the elements or other cause, except as

specifically provided herein. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facilities, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facilities are completed.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives all lien rights it may have, statutory or otherwise, concerning the Communication Facilities or any portion thereof. The Communication Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communication Facilities from time to time in Tenant's sole discretion and without Landlord's consent.

21. MECHANICS' AND MATERIALMANS' LIENS. Tenant shall not permit any mechanics' or material's liens to be filed against the Leased Premises or the Property by reason of work, labor, services or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise.

22. TAXES.

(a) Landlord is exempt from paying taxes. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Tenant shall reimburse the Landlord for Tenant's proportionate share of the real estate taxes if any, upon timely receipt of a copy of the tax bill and request for reimbursement from the Landlord. For purposes herein, Tenant's proportionate share shall be determined based upon the square footage of the Leased Premises relative to Landlord's entire parcel of real estate (using, in the case of building space, the net usable square footage of the building, and in the case of leased land, the unimproved portion of Landlord's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.

(b) Tenant shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements.

23. LETTER OF CREDIT AND SECURITY DEPOSIT. [THE SUBSTANCE OF THIS SECTION AND WHETHER THE CITY NEEDS BOTH A LOC AND A SECURITY DEPOSIT, CAN BE MODIFIED BASED UPON THE PROPERTY BEING LEASED AND THE FINANCIAL VIABILITY OF THE TENANT] Tenant shall provide to Landlord a Letter of Credit in the amount of \$_____ for the cost of removing Tenant's Communications Facilities at the expiration or termination of this Agreement and for any damage to the Property, as well as a security deposit equal to __ month's rent, to cover Landlord's costs or damages incurred as a result of any Tenant violation of this Agreement. The Letter of Credit shall be in effect at the applicable amount during the entire term of the Lease. The Tenant's failure to keep a Letter of Credit in the

applicable amount in effect shall be cause for Landlord to terminate this Agreement. Within forty-five (45) days after termination or expiration of this Agreement, Landlord shall either return the security deposit to Tenant or provide a written account of the damages or costs incurred for which all or part of the security deposit was retained.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties. Landlord's expressed or implied assent to Tenant's breach of this Agreement is not a waiver of any other breach.

(b) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(c) **Third Party Rights.** This Agreement does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation or ordinance. This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law/Venue.** This Agreement will be governed solely by the laws of the State of Colorado. Venue for any proceeding brought pursuant to this Agreement shall be in Boulder County, Colorado.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and

effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(j) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

LANDLORD

City of Longmont, Colorado

By: _____
Name: _____
Its: Mayor

Approved as to form and substance:

Originating Department

Approved as to form:

Deputy City Attorney

Proofread:

TENANT

[NAME OF ENTITY]

DATE: _____

By: _____
Name: _____
Its: _____

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____ 2019 by _____, as the Mayor of the City of Longmont.

Witness my hand and official seal.

CITY CLERK

Notary Public, State of Colorado

My commission expires: _____

ADD ACKNOWLEDGEMENT FOR TENANT

EXHIBIT 1

DESCRIPTION OF LEASED PREMISES

Page __ of __ to the Agreement dated _____, 20__, by and between the City of Longmont, Colorado, as Landlord, and _____ as Tenant.

Property Address: _____, Longmont, CO _____

Property ID#: _____

The Property is described as follows:

[LEGAL DESCRIPTION]

EXHIBIT 2

**Lease drawings of boundaries of the Leased Premises and
description/location of Tenant Communications Facilities and related utility easements**

Page __ of __ to the Agreement dated _____, 20____, by and between the City
of Longmont, Colorado, as Landlord, and _____ as Tenant.