

## REGULAR MEETING AGENDA

### CALL TO ORDER

### APPROVAL OF MINUTES – 02/13/2019

### CITIZENS REPORT (\*See procedural instructions on the following page.)

### INFORMATIONAL ITEM

1. Budget Dashboard Presentation – Joyce Robinson

### STAFF REPORTS

2. Bond Update – Alan Krcmarik
3. Broadband Outreach Update – Lindsey Johansen

### REGULAR AGENDA

4. Master License Agreement for the Use of the City of Loveland's Public Right-of-Way Property in Connection with the Operation of a Wireless Network – Brieana Reed-Harmel
5. HB503 Letter of support– Richard Bilancia

### COMMISSION & COUNCIL REPORTS

### DIRECTOR'S REPORT

### ADJOURN

#### **\* Citizens Report Procedures**

Anyone in the audience may address the LCAB on any topic relevant to the commission. Members of the public will be given an opportunity to speak to the item during the Regular Agenda portion of the meeting before the LCAB acts upon it. If the topic is a Staff Report item, members of the public should address the LCAB during this portion of the meeting; no public comment is accepted during the Staff Report portion of the meeting.

Anyone making comment during any portion of tonight's meeting should identify himself or herself and be recognized by the LCAB chairman. Please do not interrupt other speakers. Side conversations should be moved outside the Service Center Board Room. Please limit comments to no more than three minutes.

#### **Notice of Non-Discrimination**

The City of Loveland is committed to providing an equal opportunity for services, programs and activities and does not discriminate on the basis of disability, race, age, color, national origin, religion, sexual orientation or gender. For more information on non-discrimination or for translation assistance, please contact the City's Title VI Coordinator at [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) or 970-962-2372. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act (ADA). For more information on ADA or accommodations, please contact the City's ADA Coordinator at [adacoordinator@cityofloveland.org](mailto:adacoordinator@cityofloveland.org) or 970-962-3319.

#### **Notificación en Contra de la Discriminación**

“La Ciudad de Loveland está comprometida a proporcionar igualdad de oportunidades para los servicios, programas y actividades y no discriminar en base a discapacidad, raza, edad, color, origen nacional, religión, orientación sexual o género. Para más información sobre la no discriminación o para asistencia en traducción, favor contacte al Coordinador Título VI de la Ciudad al [TitleSix@cityofloveland.org](mailto:TitleSix@cityofloveland.org) o al 970-962-2372. La Ciudad realizará las acomodaciones razonables para los ciudadanos de acuerdo con la Ley de Discapacidades para americanos (ADA). Para más información sobre ADA o acomodaciones, favor contacte al Coordinador de ADA de la Ciudad en [adacoordinator@cityofloveland.org](mailto:adacoordinator@cityofloveland.org) o al 970-962-3319”.



**Commission Members Present:** Adam Auriemmo, David Hetrick, Korey Streich, Richard Bilancia, and Tom McInerney

**Commission Members Absent:** Biran Martisius, J.D. Walker, Paul Langfield, and Vi Wickam,

**Council Liaisons Present:** John Fogle, Don Overcash, and Dave Clark (Alternate)

**Council Liaisons Absent:** none

**City Staff Members Present,** Alan Krcmarik, Brieana Reed-Harmel, Coreen Callahan, Dereck Turner, Jim Lees, Joe Bernoksy, John Beckstrom, Kim O'Field, Kim Reeves, Lindsey Johansen, Ryan Greene, and Steve Adams

**Guest Attendance:** Paul Ferris

**CALL TO ORDER:** Richard Bilancia called the meeting to order at 4:30pm, after a quorum was reached

**APPROVAL OF MINUTES:** Bilancia asked for a motion to approve the minutes of the January 9, 2019 meeting.

**Motion:** Tom McInerney made the motion

**Second:** Adam Auriemmo seconded the motion. The minutes were approved unanimously.

#### INFORMATION ITEM

**Item 1: Wireless Pole Attachment and Permit fees – Brieana Reed-Harmel**  
Information only

#### STAFF REPORTS

**Item 2: Broadband Update – Brieana Reed Harmel**

Provided an update on the events that have happened since the last LCAB meeting on January 9, 2019

Staff report only. No action required.

**Item 3: Bond Information – Alan Krcmarik**

Provided an update on the bonding process for the City of Loveland Broadband Project since the last LCAB meeting on January 9, 2019

Staff report only. No action required.

**Item 4: Broadband Outreach Update – Lindsey Johansen**

Provided an update on the outreach done since the last LCAB meeting on January 9, 2019

Staff report only. No action required.

#### REGULAR AGENDA

**Item 5: Broadband Budget – Special Appropriations – Jim Lees**

When the City Council voted to establish a Municipal Fiber Utility on November 6, 2018, that triggered the need for several administrative actions, and one of those is establishing a Municipal Fiber budget for 2019. In another matter related to the revenue budget, at City Council's direction, a \$4 million

Operational Risk Mitigation and Stabilization Reserve will be established. This recommendation will be presented to City Council for consideration.

**Recommendation:**

Adopt a motion recommending that City Council approve the proposed Supplemental Budget Appropriation for the Municipal Fiber Utility to the 2019 City of Loveland Budget.

**Motion:** Tom McInerney made the motion.

**Second:** Korey Streich seconded the motion. The motion was approved unanimously.

**COMMISSION/COUNCIL REPORTS**

**Item 8: Commission/Council Reports**

**John Fogle:** Gave information about next month's NLC meeting in Washington, DC. It will take place during the March LCAB meeting..

**Don Overcash:** No updates.

**Dave Clark:** Gave information about his role of liaison to the Loveland Youth Advisory Commission. They will also attend the NLC meeting next month in Washington, DC.

**DIRECTOR'S REPORT**

**Item 7: Director's Report – Joe Bernosky**

No updates.

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**ADJOURN** The meeting adjourned at 5:23 pm. The next LCAB Meeting will be March 13, 2019 at 4:00 pm.

Respectfully submitted,

Coreen Callahan  
Recording Secretary  
Loveland Communications Advisory Board



**AGENDA ITEM:** 1  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Joyce Robinson  
**STAFF TITLE:** Accounting Manager

**ITEM TITLE:**

Budget Dashboard Presentation

**DESCRIPTION:**

A brief tour of the budget dashboard and its uses in making financial decisions

**SUMMARY:**

Review of the budget dashboard

**RECOMMENDATION:**

Information item only. No action required.



**AGENDA ITEM:** 2  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Alan Krcmarik  
**STAFF TITLE:** Executive Fiscal Advisor

**ITEM TITLE:**

Bond Update

**DESCRIPTION:**

This item will provide a brief update on the bonding process for the City of Loveland Broadband Project.

**SUMMARY:**

Alan Krcmarik will give a brief verbal update on the bond activity, including:

1. Where we are in the current stage of the bonding process
2. What remains to be completed and what the timeline looks like

**RECOMMENDATION:**

Information item only. No action required.



**AGENDA ITEM:** 3  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Lindsey Johansen  
**STAFF TITLE:** Customer Relations Specialist

**ITEM TITLE:**

Broadband Outreach Update

**DESCRIPTION:**

This item will provide an update on the broadband outreach activities.

**SUMMARY:**

Lindsey Johansen will provide updates on broadband outreach including:

1. Review of recent activities
2. Communications planning

**Media Summary:**

2/14/2019 Reporter Herald - [City of Loveland urges support of federal wireless broadband bill](#)

2/23/2019 Reporter Herald - [Before 5G wireless takes cellular speed to a new level, Loveland wrestles with policy](#)

**RECOMMENDATION:**

Information item only. No action required.



**AGENDA ITEM:** 4  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Brieana Reed-Harmel  
**STAFF TITLE:** Fiber Division Manager

**ITEM TITLE:**

Master License Agreement for the Use of the City of Loveland’s Public Right-of-Way Property in Connection with the Operation of a Wireless Network

**DESCRIPTION:**

In September 2018, the Federal Communication Commission (FCC) adopted the Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84 (“Order”). Further information on the Order as well as details on the effects of this Order for the City of Loveland are described below.

**SUMMARY:**

This Order furthers the FCC’s efforts to streamline the rollout of infrastructure for broadband services, including small cells for 4G and 5G wireless service. According to the Order, the City of Loveland (and every municipal, county, and state government) must not unreasonably prohibit the deployment of small cell wireless communications facilities within the public rights-of-way. The Order has two parts, the first is a set of regulations that govern the timelines imposed on local governments (“shot clocks”) for the review and authorization of small cell wireless applications. The second part is a Declaratory Ruling which provides guidance of the fees local governments may charge and also on how they may regulate small cell wireless rollout in the community.

To comply with the Order, the City of Loveland is moving to take proactive steps to develop a comprehensive application process, develop appropriate rates, and create design standards. Based on standard practices of other municipalities and the advice of outside counsel, a Master License Agreement between the City and the wireless facility providers is one such step that will enable the City to ensure, to the maximum extent possible, the safe deployment of these facilities in the rights-of-way.

**RECOMMENDATION:**

Adopt a motion recommending that the City Council approve a resolution approving the form of the Master License Agreement for the Use of the City’s Public Right-of-Way Property in Connection with the Operation of a Wireless Network, and authorizing the City Manager to execute the same on behalf of the City.

**ATTACHMENTS:**

-  Attachment A: Master License Agreement



# Attachment A

## MASTER LICENSE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO (“CITY”) AND \_\_\_\_\_ FOR THE USE OF THE CITY’S PUBLIC RIGHT-OF-WAY PROPERTY IN CONNECTION WITH THE OPERATION OF A WIRELESS NETWORK

This Agreement is made and entered into by and between the City of Loveland, 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 Loveland, 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 and/or controls, maintains, and operates a wireless and fiber communications network serving \_\_\_\_\_ customers (collectively, the “Network,” as more fully described in Paragraph 1.1(m) below).

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 Rights-of-Way (“ROW”) (as defined below).

E. Licensor owns and operates a Colorado home rule municipal electric utility, and owns various facilities as part of its operation of such electric utility.

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, including poles owned by Licensor located in the ROW, as provided herein.

## AGREEMENT

### 1. Definitions and Exhibits.

1.1 Definitions. For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word “shall” is always mandatory and not merely discretionary. This Section also includes the definitions as set forth in the Loveland Municipal Code.

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

(b) **Alternative Tower Structure** means man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are compatible with the natural setting and/or surrounding structures, and camouflage or conceal the presence of antennas or towers so as to make them architecturally compatible with the surrounding area pursuant to the Loveland Municipal Code and any applicable design standards or guidelines pursuant thereto. This term also includes any antenna or antenna array attached to an Alternative Tower Structure. A stand-alone Monopole (including a Replacement Pole) in the Public Right-of-Way that accommodates Small Cell Wireless Facilities is considered an Alternative Tower Structure to the extent it meets the camouflage and concealment standards of this Article.

(c) **Antenna** means any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

(d) **Loveland Municipal Code** means City of Loveland Municipal Code, and any regulations promulgated thereunder.

(e) **City** means the City of Loveland, Colorado.

(f) **City of Loveland Wireless Communications Facility Development and Design Standards, or Standards**, means the City’s standards for construction and design for the installation of Equipment, Antenna, Alternative Tower Structures, and Wireless Communications Facilities that may be installed under the terms of this Agreement and individual Site Supplements. Such Standards may be amended by the City from time to time according to the process described in such Standards.

(g) **Equipment** means Small Cell antennas and other wireless communications equipment utilizing small cell technology that is specifically identified, described, and approved by the Licensor as set forth in individual Site Supplements (as defined below) and includes, but is

not limited to, nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes, a pole, and associated and appurtenant equipment on the pole or on the ground deemed by Licensee necessary to operate the Wireless Site and uses intended thereto.

(h) **Facilities** means poles, street light poles, traffic poles, structures, infrastructure, and fixtures located within the ROW.

(i) **FCC** means the Federal Communications Commission.

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

(k) **Interference** means physical interference and radio frequency interference.

(l) **Laws** means all applicable federal, state, and local laws, statutes, constitutions, code, City of Loveland Home Rule Charter, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity, agency or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the Parties and/or this Agreement.

(m) **Municipal Facility/Facilities** means those Licensor-Owned poles and fixtures located within the ROW including, without limitation, electric distribution poles, streetlight poles and traffic poles that are designated or approved by Licensor as being suitable for placement of Equipment.

(n) **Network**, or collectively “**Networks**”, means one or more of the wireless communications facilities operated by Licensee to serve its wireless carrier customers in the City.

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

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

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

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

(s) **Pole Attachment Fee** means that fee described in Paragraph 4.1 of this Agreement.

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

(u) **Rights-of-Way** or **ROW** means the surface of and the space above and below the public roads, streets, highways, freeways, lanes, public way, alleys, courts, sidewalks, boulevards, parkways, drives, bridges, and tunnels, now or hereafter held by Licensor, or dedicated for use by Licensor, for use by the general public, or for use compatible with the operations of the Equipment.

(v) **Site Supplement** means an individual license for a particular facility located within the public right-of-way and generally authorized by this Agreement, in a form approved by the City of Loveland at the time of application and approval for such individual license.

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

(x) **Term** means the period that this Agreement is in effect as described in Paragraph 3.1 of this Agreement.

(y) **Tower** means any structure that is built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers or monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, Alternative Tower Structures and the like.

(z) **Wireless Communications Facility** (also a “WCF”) means a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Loveland Municipal Code. A WCF includes an Antenna

or Antennas, including without limitation, direction, omni-directional, and parabolic antennas, support equipment, Alternative Tower Structures, and Towers. It does not include the support structure to which the WCF or its components are attached if the WCF's use of such support structures is not the primary use of the structure. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting Antennas, nor does it include other facilities specifically excluded by provisions of the Loveland Municipal Code.

(aa) **Wireless Site** means a location on ROW selected for the Licensee's deployment of its Equipment, and includes a WCF and Small Cell Facility.

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

(a) **Exhibit A:** City of Loveland Wireless Communications Facility Development and Design Standards, as in effect on the date of this Agreement but which may be amended from time to time as described in the Standards.

(b) **Exhibit B:** Licensee's Minimum Limits of Insurance

In the event of any conflict between this Agreement, including the Exhibits, and the Loveland Municipal Code or the Loveland Wireless Communication Facility Development and Design Standards ("Standards"), as they exist on the effective date of this Agreement, the Loveland Municipal Code or the Standards prevail, except as federal or state law may preempt or act to modify the Loveland Municipal Code or the Standards at present or in the future. Future amendments to the Loveland 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 Loveland 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 Loveland 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 or replace structures 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 Loveland Municipal Code:

(i) third-party poles under the terms of a fully executed pole attachment agreement with the Owner of such poles,

- (ii) City-owned poles, including street lighting poles and utility poles, in the ROW under terms of this Agreement,
- (iii) new street lighting poles approved by the City for street lighting purposes that are purchased by the Licensee and ownership conveyed by the Licensee to the City (via bill of sale), or
- (iv) Licensee's proprietary poles to the extent permitted by, and in conformance with, City regulations and ordinances.
- (v) City's traffic signal poles under the terms of this Agreement.

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 efforts 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 application for such approval.

2.4. Modifications.

(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 reasonable advanced notice to Licensor, 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 attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment and does not impact multi-modal traffic flow.

(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 Loveland 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. For Wireless Sites that become inactive, the inventory shall include the same information as active installations in addition to the date the Wireless Site was deactivated and the date the Small Cell Facility was removed 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 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 WCF or any Wireless Site owned or operated by the Licensee or an Affiliate of the Licensee which WCF 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 WCF or unauthorized Wireless Site and upon notice by the Licensor, the Licensee shall immediately and without undue delay decommission or otherwise render the WCF or Wireless Site inoperable and the Licensee shall remove the unauthorized WCF or Wireless site within thirty (30) days of such notice by the Licensor; provided, however, upon written request of the Licensee to the Licensor and with the discretionary consent of the Licensor, the Licensor may stay or toll the required removal of the unauthorized and inoperable WCF or Wireless Site in order that the Licensee may apply for approval of the WCF or Wireless Site in accordance with Laws. In the event that the Licensee elects to apply for approval of the unauthorized WCF or Wireless Site in accordance with this Section, any application for approval shall be processed as if the WCF or Wireless Site was never established and there shall be no presumption or assumption that the WCF 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 WCF or Wireless Site is denied, the Licensee shall remove the WCF or Wireless Site within thirty (30) 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 WCF or Wireless Site is approved, Licensee must pay all required fees for a new Wireless Site, plus interest at the rate of 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 six (6) months written notice of the intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for 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 WCFs. 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 WCFs 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 WCFs 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 WCF, 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 Department of Water & Power 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 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 Site Supplements, and all new Site Supplements shall be entered into at such new rate. In such event, the Parties shall enter into an amendment to this Agreement documenting such amount. 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.

(b) Fee Payment. The Pole Attachment Fee is non-refundable. . Licensor shall invoice Licensee annually for all Pole Attachment Fees, no later than June 30 of each year. 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 Licensee's Equipment by reason of this Agreement or those related to any of Licensee's Equipment and/or services provided within the City.

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 Water & Power 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 18 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 beyond ninety (90) days from the date due 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 Loveland 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 Exhibit A or the published City of Loveland Wireless Communication Facility Development and Design Standards ("Standards"), whichever is updated most recently prior to application for the Site Supplements that will be 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 Director of the Department of Water & Power 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. 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. Pole Replacement.

(a) Subject to Paragraph 7.3(f), if a Municipal Facility needs replacement or repair due to damage, including a traffic accident or deterioration, Licensor shall perform maintenance or repair as soon as reasonably possible. Licensor may allow Licensee to perform maintenance or replacement at Licensor's sole discretion. In such event, Licensor shall reimburse Licensee in an amount up to the cost Licensor would pay to perform the same work within forty-five (45) days of Licensor's receipt of an invoice. Licensee shall cooperate with Licensor to temporarily relocate its Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to install its Equipment.

(b) Licensor shall permit Licensee to utilize a temporary location for its operation during the replacement period at a location reasonably acceptable to both Licensor and Licensee. Licensee shall be responsible for all costs associated with such relocation, including moving the Equipment to and from the temporary location.

(c) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole as described in Exhibit A, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole, and for all costs relating to replacement and activation of Equipment on the pole and any ancillary Facilities related to Licensee's Network. For purposes of this Agreement, a "standard pole" is a pole that meets the minimum requirements to house the Municipal Facility without any of the Small Cell Facilities on the pole as contemplated herein.

#### 7.4. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Equipment installations. Licensee shall, at Licensor's direction and upon ninety (90) days prior written notice to Licensee, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Equipment is interfering with or adversely affecting proper operation of Licensor-Owned Poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. Licensor may also require Licensee to relocate, remove, modify, or disconnect Equipment located in the ROW in the event of an emergency or when the public health or welfare requires such change (for example, without limitation, the Equipment is interfering with or adversely affecting proper operation of Licensor-Owned Poles, traffic signals, communications, or other Municipal Facilities). In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor.

(b) Licensee shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring Licensor to take immediate action. In such event, Licensee's contact is: \_\_\_\_\_. If after two attempts to make contact by Licensor with no response, Licensor shall have the right to undertake any actions that Licensor may deem reasonably necessary to avoid damage to property or personal injury, and Licensor's reasonable and documented costs for such undertaking shall be paid by Licensee. In the event of an assignment or transfer pursuant to Section 14 of this Agreement, any such assignee or transferee shall immediately provide updated or new contact information to the City pursuant to this provision.

(c) In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor in advance of such relocation. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

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

(e) For any removal or relocation of Equipment under this paragraph 7.4 or for any other reason, Licensee must follow the procedures and requirements for obtaining all necessary Permits as required by the City and under the Loveland Municipal Code.

7.5. 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.

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

(a) Radio Frequency Interference. Licensee shall ensure that the Equipment will not cause Radio Frequency Interference with Wireless Communication Facilities or devices, cable television, broadcast radio, or television systems, satellite broadcast systems, 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 Communications. Licensee shall not interfere in any manner with current or future Licensor or other governmental public safety communication.

(d) Licensor Interference. Licensor reserves the right, but not the obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. However, Licensor agrees that Licensor 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.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of thirty-six (36) hours following notice to the interfering Party via telephone to \_\_\_\_\_ or to Licensor at the Water and Power Department Operation Center at 970-962-3581, 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. 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.

#### 7.7. 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 Larimer 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 hours before commencement of any work in the public Right-of-Way, (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 Right-of-Way, provide written notice individually to each address in the area of the public Right-of-Way work and within one hundred seventy-five 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. Posted notices shall be in a format and size acceptable to Licensor.

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, maintenance, repair, or removal of the WCFs, 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.

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 WCFs. 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 the attached **Exhibit B** 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 WCF 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 Loveland 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. No less than fourteen (14) days prior to any such sale, assignment, or transfer by Licensee, Licensee must notify Licensor of its intent to exercise its rights under this provision. Following the sale, assignment, or transfer by Licensee, 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 sixty (60) 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 Loveland 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.

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 Manager  
City of Loveland  
500 E. 3<sup>rd</sup> Street, Suite 300  
Loveland, CO 80537 Attn: City Manager

With copy to:

City Attorney  
500 E. 3<sup>rd</sup> St., Suite 330  
Loveland, CO 80537

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 of any changes.

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.

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 Loveland 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 \_\_\_\_\_, 2019 (the "Execution Date").

[SIGNATURES ON NEXT PAGE]

LICENSOR:  
City of Loveland, a Colorado Home Rule  
Municipality

LICENSEE:  
\_\_\_\_\_

By: \_\_\_\_\_  
Stephen C. Adams, City Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
\_\_\_\_\_  
Assistant City Attorney

DRAFT

**EXHIBIT A**

**City of Loveland Wireless Communication Facilities Development and Design Standards**

*[DRAFT IN PROGRESS]*



## EXHIBIT B

### Licensee's Minimum Limits of Insurance Requirements

1. Licensee and its subcontractors shall carry during the Term, at their own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a limit of liability of \$2,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (iii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of \$1,000,000; (iv) Workers' Compensation Insurance as required by law; and (v) employers' liability insurance with limits of \$500,000 bodily injury each accident, \$500,000 disease each employee, and \$500,000 bodily injury disease policy limit.

2. All of the insurance coverages identified in Paragraph 1, except the workers' compensation insurance and employer's liability, shall apply to and include the City as an additional insured as their interest may appear under this Agreement, and shall provide a defense and indemnification to the City, except in circumstances where the City was or is negligent or engaged in willful misconduct, regardless of the City's fault or wrongdoing. The insurance shall indemnify and defend the City against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the City's benefit. Further, the insurance coverages identified in Section 1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the City.

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

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

5. Evidence of all insurance required hereunder shall be furnished to the City upon request.

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

#### 1. General.

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

B. Licensee shall procure and maintain the insurance requirements described in this Agreement, and shall require all of its contractors to obtain and maintain substantially the same coverage as required of Licensee, until all of their obligations have been discharged.

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

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

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

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than Licensor, has an insurable interest in the property required to be covered.

(a) The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by Licensor.

(b) The Builders Risk/Installation Floater insurance must include as named insureds, Licensor, Licensee, and all tiers of contractors and others with an insurable interest in the Work.

(c) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

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

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

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

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

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

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation. Such notice shall be sent directly to Attn: Risk Management, City of Loveland, 500 E. 3<sup>rd</sup> St., Suite 110, Loveland, CO 80537, with a copy of the notice sent to the City Attorney, City of Loveland, 500 E. 3<sup>rd</sup> St., Suite 330, Loveland, CO 80537.

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



**AGENDA ITEM:** 5  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Richard Bilancia  
**STAFF TITLE:** LCAB Chair

**ITEM TITLE:**

Support of City Manager’s letters, written in Support of H.R. 530

**DESCRIPTION:**

In February, the City Manager of Loveland wrote to Representative Joe Neguse, Senator Cory Gardner and Senator Michael Bennet, on behalf of the City of Loveland. These letters expressed support for H.R. 530, the Accelerated Wireless Broadband Development by Empowering Local Communities Act of 2019, and urged them to support the bill. H.R. 530 repeals recent harmful FCC regulations limiting the ability of local governments to regulate the deployment of 5G wireless infrastructure.



**SUMMARY:**

Please see Attachment A for the Original letter written by the City Manager and Attachment B for a draft letter of support from LCAB.

**RECOMMENDATION:**

Review and approve *Attachment B: Draft Letter of Support for H.R. 530 from LCAB* to be mailed by staff to Representative Neguse, Senator Cory Gardner, and Senator Michael Bennet on behalf of the LCAB Chairman and Board.

**ATTACHMENTS:**

-  Attachment A: Copy of February letters from Loveland City Manager
-  Attachment B: Draft Letter of Support for H.R. 530 from LCAB

# Attachment A



February 1, 2019

The Honorable Joe Neguse  
U.S. House of Representatives  
1419 Longworth HOB  
Washington, D.C. 20515

Dear Representative Neguse,

In concurrence with the City's adopted 2019 Legislative Policy Agenda, I am writing this letter on behalf of the City of Loveland to express our support for H.R. 530, the *Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019*, and to urge you to cosponsor this bill. H.R. 530 repeals recent harmful FCC regulations limiting the ability of local governments to regulate the deployment of 5G wireless infrastructure.

Beginning January 14, 2019, the FCC adopted regulations limiting the authority of cities and states to regulate small cell sites (e.g., attachments to street light and utility poles) needed for the deployment of 5G, went into effect. The FCC's regulations sharply limit the type and amount of fees cities and states may charge for profit-generating use of public property, set "shot clocks" as low as 60 days for cities and states to conduct all necessary inspections and authorize proposals, and drastically limit non-fee requirements cities and states may institute. Nearly 100 municipalities, utility companies, and local government associations are collectively suing the FCC over these actions.

The Broadband Deployment Advisory Committee wrote these regulations without sufficient input from local leaders, which has prevented cities from enacting necessary provisions for carriers operating in their community. The FCC's order functions as an unfunded government mandate that unnecessarily complicates existing agreements and negotiations between cities and wireless providers. These regulations impose a one-size-fits-all preemption of existing state and local policies and borderline subsidize private industry. The FCC's limits on fees for use of publicly owned property by private companies is an extreme overreach by the federal government, forcing cities to subsidize development at the cost of other critical local services.

We all want to ensure efficient, safe, and appropriate deployment of new broadband technology. However, this sweeping regulation is not the best approach. I urge you to support and cosponsor H.R. 530, and to work together with local governments to find the best solution for effective 5G deployment that meets the diverse needs of our nation's many unique communities.

If you have any questions about H.R. 530 or you would like to cosponsor, you can contact Asad Ramzanali at [asad.ramzanali@mail.house.gov](mailto:asad.ramzanali@mail.house.gov) or 202-226-4581.

Sincerely,

Stephen C. Adams  
City Manager



February 11, 2019

The Honorable Cory Gardner  
United States Senate  
354 Russell Senate Building  
Washington, D.C. 20510

Dear Senator Gardner:

In concurrence with the City's adopted 2019 Legislative Policy Agenda, I am writing this letter on behalf of the City of Loveland to express our support for H.R. 530, the *Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019*, and to urge you to support this bill. H.R. 530 repeals recent harmful FCC regulations limiting the ability of local governments to regulate the deployment of 5G wireless infrastructure.

Beginning January 14, 2019, the FCC adopted regulations limiting the authority of cities and states to regulate small cell sites (e.g., attachments to street light and utility poles) needed for the deployment of 5G, went into effect. The FCC's regulations sharply limit the type and amount of fees cities and states may charge for profit-generating use of public property, set "shot clocks" as low as 60 days for cities and states to conduct all necessary inspections and authorize proposals, and drastically limit non-fee requirements cities and states may institute. Nearly 100 municipalities, utility companies, and local government associations are collectively suing the FCC over these actions.

The Broadband Deployment Advisory Committee wrote these regulations without sufficient input from local leaders, which has prevented cities from enacting necessary provisions for carriers operating in their community. The FCC's order functions as an unfunded government mandate that unnecessarily complicates existing agreements and negotiations between cities and wireless providers. These regulations impose a one-size-fits-all preemption of existing state and local policies and borderline subsidize private industry. The FCC's limits on fees for use of publicly owned property by private companies is an extreme overreach by the federal government, forcing cities to subsidize development at the cost of other critical local services.

We all want to ensure efficient, safe, and appropriate deployment of new broadband technology. However, this sweeping regulation is not the best approach. I urge you to support H.R. 530, and to work together with local governments to find the best solution for effective 5G deployment that meets the diverse needs of our nation's many unique communities.

If you have any questions about H.R. 530 you can contact Asad Ramzanali at [asad.ramzanali@mail.house.gov](mailto:asad.ramzanali@mail.house.gov) or 202-226-4581.

Sincerely,

Stephen C. Adams  
City Manager



February 11, 2019

The Honorable Michael Bennet  
United States Senate  
261 Russell Senate Building  
Washington, D.C. 20510

Dear Senator Bennet:

In concurrence with the City's adopted 2019 Legislative Policy Agenda, I am writing this letter on behalf of the City of Loveland to express our support for H.R. 530, the *Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019*, and to urge you to support this bill. H.R. 530 repeals recent harmful FCC regulations limiting the ability of local governments to regulate the deployment of 5G wireless infrastructure.

Beginning January 14, 2019, the FCC adopted regulations limiting the authority of cities and states to regulate small cell sites (e.g., attachments to street light and utility poles) needed for the deployment of 5G, went into effect. The FCC's regulations sharply limit the type and amount of fees cities and states may charge for profit-generating use of public property, set "shot clocks" as low as 60 days for cities and states to conduct all necessary inspections and authorize proposals, and drastically limit non-fee requirements cities and states may institute. Nearly 100 municipalities, utility companies, and local government associations are collectively suing the FCC over these actions.

The Broadband Deployment Advisory Committee wrote these regulations without sufficient input from local leaders, which has prevented cities from enacting necessary provisions for carriers operating in their community. The FCC's order functions as an unfunded government mandate that unnecessarily complicates existing agreements and negotiations between cities and wireless providers. These regulations impose a one-size-fits-all preemption of existing state and local policies and borderline subsidize private industry. The FCC's limits on fees for use of publicly owned property by private companies is an extreme overreach by the federal government, forcing cities to subsidize development at the cost of other critical local services.

We all want to ensure efficient, safe, and appropriate deployment of new broadband technology. However, this sweeping regulation is not the best approach. I urge you to support H.R. 530, and to work together with local governments to find the best solution for effective 5G deployment that meets the diverse needs of our nation's many unique communities.

If you have any questions about H.R. 530 you can contact Asad Ramzanali at [asad.ramzanali@mail.house.gov](mailto:asad.ramzanali@mail.house.gov) or 202-226-4581.

Sincerely,

Stephen C. Adams  
City Manager

# Attachment B



March 13, 2019

The Honorable Joe Neguse  
U.S. House of Representatives  
1419 Longworth HOB  
Washington, D.C. 20515

Dear Representative Neguse,

*LCAB Board  
Members:*

Richard Bilancia  
Chairman

Paul Langfield  
Vice-Chair

Adam Auriemmo

David Hetrick

Brian Martisius

Tom McInerney

Korey Streich

J.D. Walker

Vi Wickam

On behalf of the Loveland Communications Advisory Board (LCAB) for the City of Loveland we want to express our serious concerns about the Federal Communications Commission (FCC) taking actions which jeopardize local governments and our citizens both in Colorado and across the United States. In concurrence with the City of Loveland's adopted 2019 Legislative Policy Agenda and in support of a letter from City Manager Stephen C. Adams dated February 1, 2019, we are writing this letter to express our support for H.R. 530, the *Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019*. We urge you to cosponsor this bill H.R. 530 to repeal recent harmful FCC regulations limiting the ability of local governments to regulate the deployment of 5G wireless infrastructure.

Beginning January 14, 2019, the FCC adopted regulations limiting the authority of cities and states to regulate small cell sites (e.g., attachments to street light and utility poles) needed for the deployment of 5G. The FCC's regulations sharply limit the type and amount of fees cities and states may charge for the use of public rights of way by private communications companies, set "shot clocks" as low as 60 days for cities and states to conduct all necessary inspections and authorize proposals, and drastically limits non-fee requirements cities and states may institute. Nearly 100 municipalities, utility companies, and local government associations are collectively suing the FCC over these actions.

The Broadband Deployment Advisory Committee wrote these regulations without sufficient input from local leaders, which has prevented cities from enacting necessary provisions for carriers operating in their community. The FCC's Order functions as an unfunded government mandate that unnecessarily complicates existing agreements and negotiations between cities and wireless providers. These regulations impose one-size-fits-all preemptions of existing state and local policies and borderline subsidizes private industry. The FCC's limits on fees for use of publicly owned property by private companies is an extreme overreach by the federal government, forcing cities to subsidize deployment of 5G wireless at the cost of other critical local services.

We all want to ensure efficient, safe, and appropriate deployment of new broadband technology. However, this sweeping regulation is not the best approach. Congress has a vital role to play in exercising its oversight on these intrusions by the FCC into areas of traditional local control. We urge you to support and



cosponsor H.R. 530, and to work together with local governments to find the best solutions for effective 5G deployment that meets the diverse needs of our nation's many unique communities.

If you have any questions about H.R. 530 or you would like to cosponsor the bill, you can contact Asad Ramzanali at [asad.ranzanali@mail.house.gov](mailto:asad.ranzanali@mail.house.gov) or 202-226-4581.

Sincerely,

Richard Bilancia  
Chairman



**AGENDA ITEM:** 6  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Joe Bernosky  
**STAFF TITLE:** Director

**ITEM TITLE:**

Commission & Council Report

**SUMMARY:**

Discuss events that the Loveland Communications Advisory Board Liaisons attended, special topics and any City Council items related to the Broadband Project from the past month.

- City Council Report – Verbal

**RECOMMENDATION:**

Commission/Council report only.



**AGENDA ITEM:** 7  
**MEETING DATE:** 3/13/2019  
**SUBMITTED BY:** Joe Bernosky  
**STAFF TITLE:** Director

**ITEM TITLE:**

Director's Report

**SUMMARY:**

Discuss events that the Director attended, special topics and items directly related to the Broadband Project from the past month.

- Director's Report - Verbal

**RECOMMENDATION:**

Director's report only.