

CITY OF BRIGHTON

NON-EXCLUSIVE MASTER LICENSE AGREEMENT FOR FIBER NETWORK

This Non-Exclusive Master License Agreement (“Agreement”) is made this ____ day of _____, 2022 (the ‘Effective Date’), and entered into by and between the City of Brighton, Colorado, a municipal corporation (the “City”), and ALLO Brighton, LLC, Nebraska Limited Liability Company authorized to do business in the State of Colorado, (the “Grantee”) whose address is 330 S. 21st Street, Lincoln, Nebraska 68510.

RECITALS

A. The City is the owner of public right-of-way (“ROW” or “Property”), and desires to protect and preserve the ROW. The City further maintains police power authority to regulate access to and use of the ROW in a manner that protects the public health, safety and welfare, consistent with Applicable Law.

B. Grantee owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”), a fiber-based telecommunications Network or Networks serving the Grantee’s customers.

C. For purpose of operating the Network, the Grantee desires the City’s permission to locate, place, attach, install, operate, control, maintain, and repair Equipment in the Public Right-of-Way (as defined in § 1.8 below) in the locations detailed in Supplemental Sites Licenses as shown on **Exhibit C**.

D. The City desires to grant to Grantee a non-exclusive license (“License”) for the above-stated purpose, upon the terms and conditions contained below, and in accordance with Applicable Law.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

Section 1. Definitions. The following definitions shall apply generally to the provisions of this Agreement.

1.1 “**Applicable Law**” means all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Agreement.

1.2 “**City**” means the City of Brighton, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.3 “**Claims**” means (1) losses, liabilities, and expenses of any sort, including attorneys’ fees reasonably related to any third-party claims; (2) fines and penalties as a result of third-party claims; (3) environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses arising as a result of third-party claims; and (4) any and all other reasonably related costs or expenses arising out of third-party claims.

1.4 “**Equipment**” means electronics equipment, transmission equipment, shelters, coaxial cables, mounts, generators, containment structures, hangers, pull boxes, conduit, pedestals, brackets, fiber optic cable and other accessories and component equipment related to the operation of Grantee’s Network.

1.5 “**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.

1.6 “**Installation Date**” shall mean the date that the first Equipment is installed by the Grantee pursuant to this Agreement.

1.7 “**Network**” or collectively “**Networks**” means the communications or telecommunication systems operated by the Grantee within the City to serve its customers in the City.

1.8 “**Public Right-of-Way**” or “**Right of Way**” means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes, including all public rights-of-way, utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include City parkland, open space, trails, state or federal rights of way, or any property owned by any person or entity other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such person or entity.

1.9 “**Services**” means the telecommunications services provided through the Network by the Grantee to its customers. Services also includes the lease of a Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the Network to another person or entity, provided that Grantee at all times retains exclusive control over the Network and remains responsible for locating, servicing, repairing, relocating or removing its Network pursuant to the terms of this Agreement. From time-to-time, the Grantee may enter into sales contracts with its customers to sell them additional services unrelated to its use of Equipment in the Public Right-of Way, for example: engineering design, network consulting, or for the sale of hardware. Revenues from these additional engineering services and hardware are not considered to be “Services” for purposes of this Agreement.

Section 2. Term. This Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier

terminated by either party in accordance with the provisions herein. Provided, however, that if the Grantee's Network is not operational and providing Services to customers within the City within two (2) years of the effective date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon thirty (30) days written notice. This Agreement will be automatically extended for an additional terms of ten (10) years from the expiration date of the current term, unless either party notifies the other in writing of its intent to not exercise this automatic extension at least three (3) years before the expiration of this Agreement (unless the facts giving rise to such a decision arise during the last three (3) years of this Agreement). If such a notice is given, the parties shall negotiate in good faith to determine whether this Agreement will be renewed. The City's evaluation criteria when considering any renewal shall include: (i) Grantee's compliance with the requirements of this Agreement; (ii) Grantee's compliance with Applicable Law; and (iii) any other provisions which the City may be authorized to consider and include. Notwithstanding the expiration of this Agreement, and so as long as Grantee is negotiating in good faith, and until such time as a new agreement has been reached or the City has determined not to renew this Agreement, Grantee shall have the right to continue to occupy and use the ROW pursuant to the terms of this Agreement.

Section 3. SCOPE OF AGREEMENT. All rights expressly granted to the Grantee under this Agreement, which shall be exercised at the Grantee's sole cost and expense, shall be subject to the City's lawful exercise of its police powers and the prior and continuing right of the City under Applicable Law to use any and all parts of the Public Right-of-Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the Public Right-of-Way. Nothing in this Agreement shall be deemed to grant convey, create, or vest in the Grantee a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to reasonable prior review and approval of the City pursuant to this Agreement and in conformance with Applicable Law and regulations. Nothing in this Agreement shall be deemed to grant a franchise, nor permit the City to collect a franchise fee. This Agreement does not grant a franchise or other right to utilize the Public Right-of-Way to construct a cable system, provide cable or other video programming services, construct a wireless communications facility, or provide wireless communications services.

3.1 **Applicability of City Site Planning Process.** Nothing in this Agreement shall waive or modify the Grantee's obligation to comply with the City's regular site plan process as governed by the City Code and other Applicable Law.

3.2 **No Interference.** The Grantee in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the current or future existence and operation of any public and private rights of way (except in the case where the Grantee's rights are prior or superior to such private right of way), sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other communications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by Applicable Law or this Agreement.

3.3 **Compliance with Laws.** The Grantee shall comply with all Applicable Law in the exercise and performance of its rights and obligations under this Agreement.

3.4 **Utility Notification Center.** Prior to undertaking any work pursuant to this Agreement, the Grantee shall take all actions necessary to become a tier 1 member of the Utility Notification Center of Colorado, and comply with and adhere to local procedures, customs and practices relating to the one call locator service program established in C.R.S. Section 9-1.5-101, et seq., as such may be amended from time to time.

Section 4. CONSTRUCTION. The Grantee intends to install its Network and Equipment at the locations set forth on the plan set approved by the City and submitted as a request for supplemental site license. The Grantee shall be required to obtain a supplemental site license for each Equipment location by submitting all information required by **Exhibit A** and using the form attached to this Agreement as **Exhibit B** prior to beginning construction. The City will authorize the Grantee to commence construction with the grant of a supplemental site license and the provision of all necessary permits and granting or approval applicable to such licenses and permits shall not be unreasonably, withheld, conditioned, or delayed. Approved supplemental site licenses will be attached to this document as part of **Exhibit C**. The Grantee shall comply with all applicable federal, State, and City technical specifications and requirements and all applicable State and local codes related to the construction, installation, operation, maintenance, and control of the Grantee's Equipment installed in the Public Rights-of-Way.

4.1 **Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Right-of-Way shall require any permits, the Grantee shall, if required under Applicable Law, apply for the appropriate permits and pay any standard and customary permit fees. The City shall promptly respond to the Grantee's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Grantee in facilitating the deployment of the Network in the Public Right-of-Way in a reasonable and timely manner. As a condition of obtaining any permit that involves digging or other excavation in the Public Right-of-Way, the Grantee shall physically identify the horizontal locations of any other existing underground utility or other facilities in the Public Right-of-Way in the proximity of the proposed work area using GIS information and illustrate such locations on the plan set drawings also illustrating the proposed Equipment in accordance with **Exhibit A**, prior to construction. Such drawings shall be provided to the City with each request for a supplemental site license. For each supplemental site license, Grantee shall submit construction drawings prepared by an engineer licensed in the state of Colorado for review no less than thirty (30) days prior to beginning construction. Construction shall not begin until written confirmation of grant of a supplemental site license by the City and the acquisition of all necessary permits.

4.2 **Blasting.** Grantee shall not do or permit to be done any blasting above, underneath, or near the Property without first having received written permission from City. Any blasting shall be done in the presence of a representative of City and in accordance with directions such representative may give for the protection or safety of facilities in the area.

4.3 **Location of Licensed Facilities.** All Licensed Facilities shall be placed a minimum of: (i) five (5) feet, measured horizontally, from existing and known planned storm sewer, sanitary sewer, and potable and non-potable water lines; and eighteen (18) inches, measured vertically, from the outside edge of the utility and any casing the utility is located in, above or below, existing and known planned storm sewer, sanitary sewer, and potable and non-potable water lines and wherever possible at perpendicular crossings; provided that a larger separation may be required in the sole reasonable discretion of the City. In the event Grantee is unable install Grantee Equipment in accordance with this Section 4.3, or has otherwise determined such placement is not feasible, the Grantee and City will work collaboratively to determine the location of the Grantee Equipment.

4.4 **Stormwater Regulations.** Installations will comply with the City's Stormwater regulations, as set forth in the Brighton Municipal Code.

4.5 **Work Times.** Grantee and its subcontractors, agents, employees and any other party performing work on behalf of Grantee shall be permitted to perform work of any kind (including, without limitation, boring and locating) Monday – Friday from 8 am – 5 pm and at other times as mutually agreed upon between Grantee and City.

Section 5. RELOCATION AND REMOVAL OF EQUIPMENT

5.1 **Relocation and Displacement of Equipment.** The Grantee understands and acknowledges that City may require the Grantee to relocate one or more of its Equipment installations. The Grantee shall at City's direction relocate such Equipment within the time frames set forth in Sections 10.22 and 10.23 of the Grantee's Franchise Agreement with the City. Any relocation to be at Grantee's sole cost and expense.

5.2 **Abandonment.** If Grantee abandons the use of Equipment for a period of six (6) or more consecutive months, the Equipment shall be removed at the expense of Grantee. In the event Grantee is unable or refuses to remove such Equipment when requested by the City, the City may authorize removal and Grantee shall be responsible for all costs incurred for such removal.

5.3 **Damage and Restoration.** Unless otherwise provided by Applicable Law, whenever the removal or relocation of Equipment is required or permitted under this Agreement, and such removal or relocation causes the Public Right-of-Way to be damaged, or whenever Grantee, in connection with any of its operations, causes damage to the ROW or any other City property the Grantee, at its sole cost and expense, and within thirty (30) days after such damage occurs, repair the damage and return the Public Right-of-Way in which the Equipment is located to a safe and satisfactory condition in accordance with Applicable Law. If the Grantee does not repair the damage as described herein, then the City shall have the option, upon fifteen (15) days' prior written notice to the Grantee, to perform or cause to be performed such reasonable and necessary work on behalf of the Grantee and to charge the Grantee for the actual costs incurred by the City at City's standard rates. Upon the receipt of a demand for payment by the City, the Grantee

shall promptly reimburse the City for such costs. Notwithstanding the foregoing, in the case of fire, disaster or other emergency impacting the public health and safety as determined in the sole discretion of the City, the City may do any of the following: (a) require the Grantee to repair and restore the site in a shorter period of time; (b) perform or cause to be performed such reasonable and necessary repairs on behalf of the Grantee and charge the Grantee for the proposed costs to be incurred or the actual costs incurred by the City at City's standard rates; (c) remove or disconnect the Grantee's Equipment located in the Public Right-of-Way or on any other property of the City. To the extent feasible as a result of any emergency, the City shall provide reasonable notice to the Grantee prior to taking such action and, if the situation safely permits, shall provide the Grantee with the opportunity to perform such action within a time period determined by the City unless, in the City's reasonable discretion, the imminent threat to public health safety or welfare makes such notice impractical.

5.4 Removal of Equipment. Subject to Section 2 of this Agreement, upon sixty (60) days' written notice by the City pursuant to the expiration or earlier termination of this Agreement, the Grantee shall promptly, safely and carefully remove the Equipment and Network in the Public Right-of-Way. If the Grantee fails to complete this removal work on or before the sixty (60) days subsequent to the issuance of notice pursuant to this Section, then the City, upon written notice to the Grantee, shall have the right at the City's sole election, but not the obligation, to perform this removal work and charge the Grantee for the actual costs and expenses, including, without limitation, reasonable administrative costs. The Grantee shall pay to the City actual costs and expenses incurred by the City in performing any removal work and any storage of the Grantee's property after removal within sixty (60) days after the date of a written demand for this payment from the City. After the City receives the reimbursement payment from the Grantee for the removal work performed by the City, the City shall promptly return to the Grantee the property belonging to the Grantee and removed by the City pursuant to this Section at no liability to the City. If the City does not receive reimbursement payment from the Grantee as set forth above, or if City does not elect to remove such items at the City's cost after the Grantee's failure to so remove, any items of the Grantee's property remaining on or about the Public-Right-of-Way may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner permitted by Law. Alternatively, the City may elect to take title to abandoned property, provided that the Grantee shall submit to the City an instrument satisfactory to the City transferring to the City the ownership of such property. The provisions of the Section shall survive the expiration or earlier termination of this Agreement. Unless removed by the City as set forth herein, the Grantee may remove its Equipment from the Public-Right-of-Way at any time at its discretion, provided that any such removal is in compliance with applicable zoning and permitting requirements.

Section 6. OTHER UTILITIES.

6.1 The Grantee agrees and understands that if the City has permitted or allowed natural gas gathering, storage, transmission, distribution, or related facilities on the Property, the Grantee has been fully advised by the City that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. The Grantee shall advise

all of its employees, agents, contractors, and other persons who enter upon the Property the existence and nature of such natural gas facilities and the potential danger and risk involved.

6.2 The Grantee agrees and understands that any natural gas facilities, if located on the Property, may be subject to cathodic protection by rectifier and related anode beds, and that the City shall not be liable for stray current or interfering signals induced in the licensed facility as a result of the operating of the cathodic protection system.

6.3 The Grantee agrees and understands that if the City has permitted and allowed to be constructed electric transmission, distribution, or related facilities on the Property, the Grantee has been fully advised by the City that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. The Grantee shall advise all of its employees, agents, contractors, and other persons who enter upon the Property of the existence and nature of such electric facilities and the potential danger and risk involved.

6.4. If any provider of wireline based broadband services competitive with the Services provided by Grantee is lawfully authorized by the City or by any other State or federal governmental entity to provide such services, and such provider's authorization contains terms that grant a preference to such other provider compared to the terms of this Agreement, the Grantee may notify City in writing with an explanation of the basis that it believes a competitor is receiving preferential terms and shall provide proposed language to amend this Agreement in order to ensure that terms of rights of way access among similarly situate providers are competitively neutral and non-discriminatory. After such written notice the parties shall have ninety (90) days to determine whether and how to amend this Agreement to address the issues raised by Grantee, to ensure that taken as a whole, the totality of the obligations applicable to Grantee are competitively neutral and non-discriminatory compared with those imposed on the competing provider. If the parties are not able to reach agreement on these issues, both parties reserve all rights they may have to pursue remedies under Applicable Law.

Section 7. HAZARDOUS SUBSTANCES. The Grantee agrees that the Grantee, 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 the Property or the ROW in which it is located in violation of any Applicable Law. Except to the extent of the negligence or intentional misconduct of the City, the Grantee will pay, indemnify, defend and hold the City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by the Grantee pursuant to this Agreement. The Grantee 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 the Grantee is only using a small portion of the ROW and that the Grantee shall not be responsible for any environmental condition or issue except to the extent resulting from the Grantee's, its agents' or contractors' specific activities and responsibilities under this Agreement.

Section 8. INDEMNIFICATION. The Grantee shall indemnify, defend, protect, and hold harmless the City, its elected officials, officers, employees, agents, and contractors from and against any and all Claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from the Grantee's activities undertaken pursuant to this Agreement.

8.1 **Limitation of Liability.** Neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The City does not waive any of the protections, immunities or limitations afforded it by the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et. seq.) as same may be amended from time to time.

8.2 **Notice.** The City shall give the Grantee timely written notice of the making of any Claim or of the commencement of any action, suit or other proceeding in connection with any Claim. In the event such Claim arises, the City shall tender the defense thereof to the Grantee and the Grantee shall consult and cooperate with the City Attorney's Office while conducting its defense. The City and any indemnified party shall cooperate fully therein with the Grantee's legal representative and shall be consulted on any settlements of Claims prior to the execution of any settlement agreements.

8.3 **Separate Representation.** If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by the Grantee to represent the City, the Grantee shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the City shall select its own counsel and any other experts or consultants, subject to the Grantee's prior approval, which shall not be unreasonably withheld. The City's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by the Grantee.

Section 9. INSURANCE.

9.1 **Required Coverages.** The Grantee shall, and shall require its subcontractors to maintain substantially the same coverage with substantially the same limits as required of Grantee, obtain and maintain at its own cost and expense at all times during the term of this Agreement (a) Commercial General Liability insurance protecting the Grantee in an amount of One Million Dollars (\$1,000,000) per occurrence (combined single limit), for bodily injury and property damage, and Two Million Dollars (\$2,000,000) general

aggregate, and One Million Dollars (\$1,000,000) for personal and advertising injury liability and Two Million Dollars (\$2,000,000) for products-completed operations; (b) Commercial Automobile Liability covering all owned, hired, and non-owned autos in an amount of Five Hundred Thousand Dollars (\$500,000) combined single limit each accident for bodily injury and property damage; (c) Statutory workers' compensation and employer's liability insurance in an amount of Five Hundred Thousand Dollars (\$500,000) each accident/disease/policy limit; (d) Umbrella/Excess Insurance of at least Five Million Dollars (\$5,000,000) per occurrence. All required insurance policies shall include the City, its Council members, officers, and employees as additional insureds as their interest may appear under this Agreement for any covered liability arising out of the Grantee's performance of work under this Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. "Claims Made" policies, if approved by the Town, and subsequent insurance certificates shall provide a "retro-date" which shall include continuous coverage from the effective date of this Agreement. "Claims Made" renewals or carrier and policy replacements shall reflect the original "retro-date" and any necessary extended reporting periods so as to provide for continuous coverage. Upon receipt of notice from its insurer(s) the Grantee shall use commercially reasonable efforts to provide the City with thirty (30) days' advance written notice of cancellation. Notwithstanding the foregoing, upon sixty (60) days' prior notice to and review by the Grantee, the City may increase the aforementioned limits of insurance at any time in its reasonable discretion in order to provide for levels of coverage similar to that required of other rights of way users at that point in time.

9.2 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Agreement, the Grantee shall file with the City the required original certificate(s) of insurance with blanket additional insured endorsements, which shall state the following:

- (a) The policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) That the Grantee's insurance policies are primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
- (c) That the Grantee's insurance policies waive any right of recovery the insurance company may have against the City.

The certificate(s) of insurance shall be mailed to the City at the address specified in § 9 below, and shall be updated annually within thirty (30) days of the anniversary of the Effective Date of this Agreement.

9.3 **Insurer Criteria.** Any insurance provider of the Grantee shall be admitted and authorized to do business in the State of Colorado and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a Financial Size Category of "VII". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

9.4 **Severability of Interest.** "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

Section 10. NOTICES. All notices which shall or may be given pursuant to this Agreement shall be in writing and delivered (a) through the United States mail, by first class mail, postage prepaid; or (b) email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described; or (c) by electronic mail addressed as follows:

If to the City:

City of Brighton
500 S. 4th Ave.
Brighton, Colorado 80601
Attn: City Manager
Email: _____

City of Brighton
500 S. 4th Ave.
Brighton, Colorado 80601
Attn: City Attorney
Email: _____

and

If to Grantee:

ALLO Brighton, LLC
330 S. 21st Street
Lincoln, Nebraska 68510
Attention: Brad Moline, President
Email: brad.moline@allofiber.com

ALLO Brighton, LLC
121 S. 13th Street, Suite 100
Lincoln, Nebraska 68508
Attn: Legal Department

10.1 **Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

10.2 **Emergency Contact.** The Grantee shall be available to the employees of any City department having jurisdiction over the Grantee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The 24-hour emergency contact of the Grantee can be reached at: 308-633-7975.

The Grantee shall provide to the City a new 24-hour telephone number pursuant to this Section 10 prior to changing telephone numbers.

Section 11. TERMINATION. This Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) business days from receipt of notice. Except as expressly provided herein, the rights granted under this Agreement are irrevocable during the term.

Section 12. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL.

12.1 To the extent that the parties are subject to a cable franchise agreement at the time of any proposed assignment, or transfer of ownership or control of the Company, the terms of such cable franchise agreement governing assignment and transfer of ownership or control shall apply to this Agreement. If no cable franchise agreement is in effect at the time, the following sections shall govern these issues.

12.2 Any sale, transfer or assignment of this Agreement is subject to the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. Any sale, transfer or assignment will bind the successor in interest to the terms of this Agreement. Notwithstanding anything contained in this Agreement, the Grantee may pledge the assets of the Network and Equipment for the purpose of financing provided that such pledge of assets shall not impair the Grantee or mitigate the Grantee's responsibility and capability to meet all its obligations under the provisions of this Agreement.

Section 13. MISCELLANEOUS PROVISIONS. The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

13.1 A copy, either physical or electronic, of the applicable supplemental site license shall be on the Property and available during construction of any licensed facility.

13.2 **Non-exclusive Use.** The Grantee understands that this Agreement does not provide the Grantee with exclusive use of the Public Right-of-Way and that City shall have the right to permit other providers of communications services to install equipment or devices in the Public Right-of-Way.

13.3 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

13.4 **Severability of Provisions.** If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

13.5 **Federal and State Authorizations.** The Grantee has obtained, or will obtain, all government licenses, permits and authorizations by the Federal Communications Commission which are required in order to provide the Services.

13.6 **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Colorado, County of Adams, or only to the extent that provisions of federal law apply to the dispute, in the United States District Court for the District of Colorado.

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

13.8 **Consent Criteria.** In any case, where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

13.9 **Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

13.10 **Amendment of Agreement.** This Agreement may not be amended except pursuant to a written instrument signed by both parties.

13.11 **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, 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, pandemic, 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.

13.12 **Entire Agreement.** This Agreement and all of its Exhibits contain the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. Any prior oral or written agreements or licenses between the parties concerning use of the Public Right-of-Way is superseded by this Agreement.

13.13 **Public Disclosure.** Grantee 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.

13.14 **Counterparts.** This License may be executed in two original counterparts, each of which shall be deemed an original of this instrument.

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

THE CITY OF BRIGHTON

By: _____
Michael Martinez, City Manager

ATTEST:

APPROVED AS TO FORM:

By: _____
City Clerk

By: _____
Alicia Calderon, City Attorney

ALLO BRIGHTON, LLC:

By: _____
Bradley A. Moline, President

EXHIBIT A

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

1. Plan sets, engineering design, and specifications for installation of the Equipment (as defined in this Agreement). Where applicable, the design documents shall include specifications on design and ADA compliance.
 - a. The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements via a satellite photo background in the plan set.
2. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
3. Description of the utility services required to support the facilities to be installed.
4. Completed Right-of-way Permit Application.

ALL SUPPLEMENTAL SITE LICENSE MATERIALS SHALL BE LABELED WITH THE APPLICABLE SUPPLEMENTAL SITE ID NUMBER

THE CITY WILL RETAIN ALL DOCUMENTATION FOR GRANTED SUPPLEMENTAL SITE LICENSES

EXHIBIT B
FORM OF SUPPLEMENTAL SITE LICENSE

EXHIBIT C

SUPPLEMENTAL SITE LICENSES

THE FOLLOWING SUPPLEMENTAL SITE LICENSES HAVE BEEN GRANTED BY THE CITY:

SUPPLEMENTAL SITE ID NO.	DATE GRANTED	APPROVED BY: