

**CITY OF PAPIILLION
MAYOR AND CITY COUNCIL REPORT
MARCH 19, 2019 AGENDA**

Subject:	Type:	Submitted By:
A request for approval of a Master Agreement for Small Wireless Facility Attachments and Small Wireless Facility Support Poles in Public Rights-of-Ways dated March 2019.	Resolution #R19-0048	Mark A. Stursma, AICP Planning Director

SYNOPSIS

This is a request for approval of the City of Papillion Master Agreement for Small Wireless Facility Attachments and Small Wireless Facility Support Poles in Public Rights-of-Ways. The purpose of this master agreement is to establish a uniform agreement regarding requests for new and collocation of small wireless facilities within public rights-of-way (ROW). The master agreement establishes an application fee and also a yearly occupation fee for use of the ROW for a Small Wireless Facility and/or Small Wireless Facility Support Poles.

It should be noted that this master agreement works in conjunction with the City of Papillion Design Manual for installation of Small Wireless Facilities and Small Wireless Facility Support Poles. The Design Manual provides siting criteria and design standards for the installation of Small Wireless Facilities (better known as Small Cells), including Small Wireless Facility Network Nodes, Small Wireless Facility Support Poles and related ground equipment being installed in the public rights-of-way.

FISCAL IMPACT

Reasonable fees generated from right-of-way (ROW) occupation by Wireless Telecommunication Companies. The application fee for each new pole in the ROW is \$500. Attachment of Small Wireless Facilities to existing poles is limited to \$100 each. All proposed fees are in harmony with the recent Federal Communications Commission (FCC) regulatory ruling regarding Small Cells.

RECOMMENDATION

Approval, contingent upon City Council approval of:

- Ordinance No. 1832 – Small Wireless Facilities Ordinance Amendment
- RES. #R19-0047 – City of Papillion Design Manual for Installation of Small Wireless Facilities and Small Wireless Support Poles

BACKGROUND

The FCC, at the urging of the cellular network industry, passed a declaratory ruling (FCC-CIRC1809-02) known as the “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment” on September 24, 2018. The FCC order provides for the expedited processing of Small Cell application, 60 days for collocation on existing infrastructure and 90 days for new construction. The order also includes specifications regarding fees that government entities can require and aesthetic (design) considerations.

ATTACHMENTS:

RES. #R19-0048

City of Papillion Master Agreement for Small Wireless Facility Attachments and Small Wireless Facility Support Poles

RESOLUTION NO. R19-0048

BE IT RESOLVED by the Mayor and City Council of the City of Papillion that the Master Right-of-Way Occupation Agreement for Small Wireless Facilities dated March 2019 is hereby approved, contingent upon City Council approval of the following:

- Ordinance No. 1832 – Small Wireless Facilities Amendment
- RES. #R19-0047 – City of Papillion Design Manual for Installation of Small Wireless Facilities and Small Wireless Support Poles

PASSED AND APPROVED THIS _____ DAY OF _____, 2019.

CITY OF PAPIILLION, NEBRASKA

David P. Black, Mayor

Attest:

Nicole L. Brown, City Clerk

(SEAL)

**MASTER AGREEMENT FOR SMALL WIRELESS FACILITY ATTACHMENTS AND
SMALL WIRELESS FACILITY SUPPORT POLES IN PUBLIC RIGHTS-OF-WAY**

THIS MASTER AGREEMENT FOR SMALL WIRELESS FACILITY ATTACHMENTS IN PUBLIC RIGHTS-OF-WAY ("AGREEMENT") is entered into this ____ day of 2019, by and between the City of Papillion, a Municipal Corporation (hereinafter referred to as "CITY"), and _____ (hereinafter referred to as "_____" or "PERMITTEE") (collectively, the "Parties").

WHEREAS, CITY is organized and existing under and by virtue of the laws of the State of Nebraska and possesses plenary power and authority over the use and occupation of the public Rights-of-Way within its corporate boundaries;

WHEREAS, PERMITTEE desires to construct, install, operate, modify, replace, and maintain a Small Wireless Facility consisting of Attachments upon street light poles and other vertical structures within certain public Rights-of-Way within the corporate boundaries of CITY;

WHEREAS, CITY is authorized under Neb. Rev. Stat. §16-201 to grant leases and permits to occupy public rights-of-way;

WHEREAS, _____ has agreed to remit certain fees to CITY, as described and set forth herein, in order to reasonably compensate the public for _____'s use of said public rights-of-way by _____; and

WHEREAS, CITY and _____ have agreed to be bound by the terms and conditions set forth herein which shall govern _____'s use of the public rights-of-way.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the Parties agree as follows:

Article I - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this Agreement, the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Agreement.

1. "Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control with a party to this Agreement.

2. "Attachment" or "Attachments" means all physical components of _____'s private network collectively located on any single node within the Rights-of-Way, consisting of, but not limited to, small cell wireless antenna, receiver or transceiver, mounting hardware, power supplies, grounding or bonding wires, and other equipment utilized to provide a Small Wireless Facility Communications Service, including any and all associated equipment not part of or integrated into the _____ cable system.

3. "Communications Service" means the transmission or receipt of voice, video, data, broadband internet or other forms of digital or analog signals over the Attachments.

4. "Jurisdiction" shall mean within the corporate boundaries of the City of Papillion as now or hereafter constituted.

5. "Make-Ready Work" means all work, as reasonably determined by the CITY, required to accommodate _____ Attachment and/or to comply with all the CITY's building codes. Such work includes, but is not limited to, rearrangement of existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), cost of a (CITY-approved) substitution of light poles, tree trimming (other than tree trimming performed for normal maintenance purposes), facility construction, or conduit system clearing, but does not include routine maintenance.

6. "Permit Term" means the time period during which an approved permit for one particular Attachment shall remain in effect.

7. "Pole" means a service pole, Small Wireless Facility Support Pole, or utility pole.

8. "Small Wireless Facility" means a small wireless base station designed to provide additional coverage or capacity in a limited geographic area using equipment elements intended for outdoor use whose smaller size and weight allows them to be installed on vertical structures like poles, towers, buildings or other structures.

9. "Small Wireless Facility Support Pole" means a pole installed by a network provider for the primary purpose of supporting a Small Wireless Facility.

10. "Right-of-Way" or "Rights-of-Way" shall mean CITY streets, roads, alleys, sidewalk areas and other dedicated rights of way within the Jurisdiction, together with dedicated utility easements within the Jurisdiction and easements deeded to the CITY for utility purposes. The term shall not include any other property owned or leased by the CITY for any other proprietary, public or municipal use.

11. "Term" shall mean the time period during which this Agreement shall remain in effect, and shall run from the effective date of this Agreement for four (4) terms of five (5) years each, each of which shall be automatically renewed unless either party gives the other at least ninety (90) days written notice of non-renewal before the end of a term.

12. "Underlying Rights" shall mean all deeds, leases, easements, pole sharing agreements and other interests by which _____ is authorized to construct, install, operate, maintain, replace, and modify its private network upon any real or personal property, whether public or private.

Article II-Grant to Use Right of Way

1. Subject to _____ compliance at all times with all of the terms and conditions of this Agreement, all of CITY's ordinances, and all applicable local, state and federal laws, and further subject to the CITY's lawful exercise of its police power (including, but not limited to, permit and

building code requirements) and the CITY's prior and superior right to usage for municipal purposes, CITY hereby grants to _____, insofar as it has or may have the requisite power and authority to do so, permission to make reasonable use of the Rights-of-Way to construct, install, operate, maintain, replace, and modify Attachments upon street light poles in the Right of Way; provided, however, that with respect to state highways, _____ must separately obtain consent from the Nebraska Department of Transportation; and provided, further, that Attachments permitted pursuant to this Agreement shall not be subject to zoning and subdivision requirements. Attachments are not permitted on any pole that is part of the CITY's traffic signal or traffic control system.

2. The permissions granted herein to make reasonable use of the Rights-of-Way shall not be deemed to be a franchise, nor an exclusive license or right, and the CITY reserves the right to make or grant a similar use of the Rights-of-Way to any other person or persons.

3. The CITY retains the following rights in regard to this Agreement:

(a) To terminate this Agreement as allowed herein for material breach by _____;

(b) To use, control and regulate the use of the CITY streets, roads, easements, other public places and the Rights-of-Way, and the space above and beneath the same. The CITY shall not be required, but may give _____ permission, to remove or alter existing structures, trees or vegetation to accommodate _____ proposed location of an Attachment; and

(c) To require the removal or relocation of any of the Attachments from the Rights of Way if reasonably necessary, in the sole judgment of the CITY, for any public or municipal purpose or project, at _____ sole cost and expense (or its proportionate share of expense if _____ shares Attachments with other parties) upon at least sixty (60) days written notice; provided, however, that because of such removal or relocation _____ shall be required to remit to the CITY a new permit application and fee for attachment of the removed or relocated Attachments within the Right of Way at a new location. _____ may abandon any segment where a removal or relocation is required.

4. In the event of any conflict between the terms of this Agreement and a CITY ordinance, the precedence of those documents shall be in the order as just stated in this sentence.

5. Upon termination of this Agreement, whether by expiration of the Term or by earlier termination by a party as allowed by this Agreement, _____ rights to use of public Rights of Way shall cease.

Article III -Fees and Charges

1. Payment of Permit Application Fee for New Small Wireless Facility Support Pole(s). The application fee for the installation of a new Small Wireless Facility Support Pole and

the collocation of a Small Wireless Facility that is permitted under this Agreement shall be five hundred dollars (\$500) per pole in a permit application ("Application Fee"), to reimburse the CITY for costs incurred for initial project management services, review of the permit application, and site design approval. Payment of the Application Fee shall be made upon filing of the permit application. Notwithstanding, _____ shall not be required to pay an Application Fee in the case of replacement or modification of an Attachment.

2. Payment of Permit Application Fee for Collocating on Existing or Replacement Pole(s). Application fees for collocation of Small Wireless Facilities on an existing or replacement pole shall not exceed one hundred dollars (\$100) each for the first five Small Wireless Facilities on the same application and one hundred dollars (\$100) for each additional Small Wireless Facility on the same application.

2. Annual Fee. _____ shall also pay to the CITY an Annual Fee of \$250 per Attachment, per year, to offset the CITY's incrementally increased administration of CITY Rights of Way utilized by _____ under this Agreement. The Annual Fee shall be paid by or before January 1st, in advance for the ensuing year. The Annual Fee shall be prorated for an Attachment first activated in the middle of any such year and shall be paid within sixty (60) days of full execution of the Permit Application. The CITY Finance Department will bill _____ annually for upcoming Annual Fees on approximately November 1 of each year of the Term. The Annual Fees are intended to offset the increased cost to the Public Works Department for management of CITY infrastructure in the Right of Way.

3. Refunds. No fees and charges shall be refunded on account of any surrender of a permit granted hereunder. Notwithstanding the forgoing, the CITY shall not continue to charge an Annual Fee going forward for any permit surrendered in the previous calendar year, and _____ shall be entitled to a refund upon discovery of such a billing error.

4. Inventory. The CITY shall have the right to require a joint inventory of all Attachments no more frequently than once every year by the CITY and _____, unless both parties agree to a new inventory schedule. The cost of the inventory shall be reasonable and shall be paid by _____.

5. Increase in Fees. Beginning at the commencement of the second term, the amounts of the application fee and annual fee shall increase each year in proportion to the percentage increase (if any) of the Consumers Price Index (for urban consumers) for the Midwest Region for the immediately preceding year.

Article IV -Term

This Agreement shall be effective for a term beginning on the effective date of this Agreement for four (4) terms of five (5) years each, each of which shall be automatically renewed unless either party gives the other at least ninety (90) days written notice of nonrenewal before the end of a term, or unless sooner terminated as otherwise provided in this Agreement.

Article V - Sales and Use Tax

1. _____ agrees to obtain a sales and use tax license from the CITY and to comply with all provisions.
2. To the extent _____ sale of private network services to its customers is taxable, _____ shall collect such taxes from its customer and promptly remit same to the CITY.
3. To the extent _____ engages in business as a telephone company as defined by the Papillion Municipal Code, _____ shall be subject to the CITY's Telecommunication Occupation tax, as provided in Papillion Municipal Code Chapter 175.

Article VI- Use of Right of Way

1. Attachments shall be located, installed and maintained on street light poles so that none of the Attachments materially endanger the lives, health or safety of persons, or materially interfere with any public improvements the CITY or other governmental entities (including any traffic control devices or signs, storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Attachments hinder or obstruct the free use of the streets or other public ways. All Attachments shall be so located as to cause minimum radio frequency or other interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Upon application for each Attachment under this Agreement, _____ shall furnish to the CITY the plans for such Attachment, including photos of the subject facility and surrounding location, depiction, sketch or renderings of the Attachment, its dimensions, the location of the street light pole, the height of the Attachment on the pole, equipment specifications, attachment methods, and any applicable engineering, traffic control, and landscaping plans. _____ shall also provide proof of OPPD's consent to use of the particular street light pole and the plan for the specific Attachment. _____ shall also provide proof of approval of the specific plans by the Nebraska Department of Transportation, if applicable. Such plans may be reviewed by the CITY to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, (c) that adverse impact on the environment has been minimized, (d) that this Agreement is complied with, and (e) that the size and scale of the proposed Attachment are not too large nor disproportionate in relation to the pole and the surrounding environment. _____ shall comply with all reasonable regulatory requirements of the CITY. Plans for Attachments shall be submitted with applications and shall be submitted as an addendum to this Agreement.

3. All construction, excavation, maintenance and repair work done by _____ shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the CITY, the general public and individuals. All such construction, excavation, maintenance and repair work done by _____ shall comply with all applicable codes of the CITY and the State of Nebraska, and _____ shall be responsible for obtaining all applicable permits and licenses,

if any. The CITY shall have the right to inspect all construction or excavation work to insure compliance with applicable codes and permits, and may order _____ to perform corrective work. All public and private property disturbed by _____ activities shall be promptly restored by _____ at its expense to substantially its former condition, subject to inspection by the CITY's Director of Public Works or his/her designee and compliance by _____ with reasonable remedial action required by said official pursuant to the inspection. _____ shall be liable to CITY for the full cost of restoring any public property not promptly remedied by _____ as reasonably required by said official.

4. The installation, maintenance, renovation, modification and replacement of Attachments by _____ shall be subject to regulation by the CITY through the City of Papillion Design Manual for Installation of Small Wireless Facilities and Small Wireless Facility Support Poles attached as Exhibit "A" (Design Manual), including but not limited to, (a) the location of Attachments in or upon the street light poles, within Right of Way, (b) the disturbance and reconstruction of poles, pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Attachments shall be designed and installed so as to cause a minimal amount of radio frequency or other interference with public property, water mains, sewer mains, electric and natural gas facilities, trees and vegetation, street lights, traffic control devices and signs, and all other municipal or authorized public use of the Right of Way. The CITY's Director of Public Works may direct and require _____ to locate its Attachments within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize radio frequency interference with other facilities or utilities. _____ shall install and maintain its Attachments in such manner as to minimize interference with existing structures, trees, natural features and vegetation. In the event any Attachment causes such radio frequency interference, and after CITY has notified _____ in writing of such interference, _____ will take all commercially reasonable steps necessary to correct and eliminate the radio frequency interference, including but not limited to, at _____ option, powering down such equipment and later powering up such equipment for intermittent testing. At the CITY's reasonable discretion, in the event any Attachment causes such radio frequency interference and after _____ is unable to remedy such radio frequency interference within ninety (90) days from the receipt of the CITY's notice, the CITY may require _____ to remove the Attachment.

Article VII - Permit Application Procedures

1. _____ shall not install any new Attachments on or within any Right of Way without first applying for and having received approval of a Small Wireless Facility permit application ("Permit Application"), on file with the Planning Department, pursuant to the applicable requirements found in the City of Papillion Design Manual for Installation of Small Wireless Facilities and Small Wireless Facility Support Poles attached as Exhibit "A" (Design Manual). Unless otherwise agreeable to the parties, _____ shall submit a Permit Application for every proposed new pole Attachment that shall be accompanied by the items listed in Section VI-2 above.

2. _____ shall not be required to file a Permit Application or to pay an Application Fee for replacement or modification of an Attachment. Rather, _____ shall file with CITY staff updated drawings of the Attachment reflecting such replacement or modification. Such proposed replacement or modification shall be subject to CITY approval.

3. _____ shall apply for each separate Attachment in a separate permit application.

4. CITY agrees to make a good faith effort to process all of _____ applications for construction permits in an expeditious manner, but not to exceed thirty (30) days. The CITY's response will either provide a written explanation as to why the Permit Application is being denied, either in whole or in part, or provide an approval and estimate of the costs to be paid by _____ to the CITY for all necessary Make-Ready Work to be performed by the CITY. If additional information is needed or questions occur, the CITY will make a good faith effort to complete the processing in an expeditious manner, but not to exceed thirty (30) days after the additional information is received and questions are resolved. The CITY will not unreasonably delay the processing of permits.

5. Upon approval of an application, completion of any necessary Make-Ready Work and receipt of payment for such work, if any, the CITY will sign and return the Permit Application to _____, which shall serve as authorization for _____ to make its Attachment(s).

6. The Permit Term for an approved permit for a particular Attachment shall commence upon the date of approval of the permit by the CITY and run for one year thereafter. The Permit Term shall also be automatically renewed on a year by year basis thereafter during the Term, unless either party gives written notice to the other party of the intent to terminate the Attachment permit at the end of the Current Year ("Current Year" meaning the initial year, or the current renewal year, as the case may be). Such written notice shall be given at least 30 days prior to the end of the Current Year. In the event of such termination, _____ shall remove the terminated Attachment within 30 days after the end of the Current Year.

7. If _____ wishes to change equipment at a given Attachment location, _____ shall file with the CITY the required updated drawings of the Attachment, without a Permit Application Fee. Such proposed change shall be subject to CITY approval, as with any new Permit Application.

Article VIII - Additional City Regulation

The CITY expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the CITY to promote the health, safety and welfare of its inhabitants and their property.

Article IX - Coordination and Conduit/Pole Sharing

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, holders of leases and permits and other interests needing to locate or maintain facilities in the Right of Way for the benefit of the public, it is imperative that any conduit and pole sharing be encouraged to

the greatest extent possible. In furtherance of such purposes, _____ agrees, wherever feasible, that it shall cooperate with CITY in placing Attachments within the Rights of Way and in sharing unused space within underground conduits owned by _____, and upon any poles or other above ground facilities owned or occupied by _____.

2. _____ agrees to make good faith efforts to coordinate with the CITY on providing access to _____ cellular network system for the communication needs of the CITY's traffic signal and street light systems. Both parties shall meet and enter into a separate agreement relating to the CITY's use of the _____ network for the communication needs of the CITY's traffic signal and street light systems.

Article X - Insurance and Bond

1. Prior to commencement of any installation of Attachments under this Agreement, _____ shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, at _____ expense, Commercial General Liability ("CGL") insurance with a limit of \$2,000,000 per occurrence for bodily injury (including death) and or damage to property, including explosion, collapse and underground property damage hazards. Under the terms of the required CGL policy, this Agreement shall be defined as an insured contract. The policy shall include the CITY as an additional insured, as its interest may appear under this Agreement. A certificate of insurance shall be filed with the CITY Attorney's office prior to commencement of installation of Attachments, which evidences compliance with the policy requirements stated above. _____ shall notify the CITY of any prospective cancellation or reduction in coverage of the CGL policy, in advance of the cancellation or reduction. The CGL policy shall be available for review by the CITY upon request.

2. _____ shall provide a Performance Guaranty Bond in the minimum amount of \$75,000 for each new Small Wireless Facility Support Pole and \$25,000 for collocating and/or modifications of existing Small Wireless Facility Support Pole(s) pursuant to the City of Papillion Master Fee Schedule.

Article XI - Indemnification and Representations

1. Indemnity. _____ shall indemnify, defend and hold harmless CITY, its officers, employees, elected officials, boards, commissions and any other legal entity affiliated with CITY from and against all Claims brought by third parties which any such indemnified Party is required to pay or to assume which have resulted from _____ breach of any duty or obligation imposed by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct), or this Agreement.

2. City's Immunities. Nothing in this Agreement is intended, nor shall it be construed, to create or extend any rights, claims or benefits to, or assume any liability for or on behalf of, any third party, or to waive any immunities or limitations otherwise conferred upon CITY under or by virtue of federal or state law.

3. Notice and Defense of Third-Party Actions. Each Person entitled to indemnification under this Article XI (an "Indemnified Party") shall give prompt written notice to each Person that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any Claim by a third party (collectively, a "third party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third party action, and the amount (which may be estimated) of liability asserted by reason of the Claim; such notice shall also include a copy of the document (if any) by or in which the third party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this Article unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third party action on such terms as the Indemnifying Party deems appropriate; provided, however, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement, compromise, admission or any acknowledgment of the validity of a third-party action or any liability in respect thereof, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement, compromise, admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

4. Cooperation. The Parties shall cooperate with each other in the defense of any third-party action that is the subject of this Article XI and shall furnish each other all such further

information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

5. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and

(d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

Article XII - Special Indemnification Arising from Attachments

1. _____ shall install, construct, maintain and operate its private network in a safe manner providing reasonable protection against injury or damage to any and all persons or property. _____ specifically agrees to indemnify, defend and hold the CITY harmless from all claims, costs, demands, suits, costs of defense and judgments which arise from, in whole or in part, _____ acts or omissions pursuant to this Agreement, and from all damages or penalties arising out of the installation, construction, operation, or maintenance of _____ private network and Attachments, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Agreement, except to the extent such damages or penalties result from the intentional or willful and wanton misconduct of the CITY or agent thereof. CITY shall not be liable for, and _____ shall indemnify, defend and hold the CITY harmless from all costs, damages and claims which arise from or relate to delay by _____ in performing its obligations hereunder, for any cause whatsoever, except for intentional or willful and wanton misconduct of the CITY. _____ also hereby agrees to pay all reasonable expenses of the CITY incurred by the CITY in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney' fees, and the reasonable value of any services rendered by the CITY Attorney, his/her assistants, or any employees of the CITY.

2. The CITY will provide notice to _____ of the pendency of any claim or action against the CITY arising out of the operations of _____, the exercise by _____ of its rights under this Agreement or the performance thereof by _____. _____ shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit _____ obligation of full indemnification of the CITY hereunder.

Article XIII ' Remedies. Termination. Removal

Papillion, NE 68046

And: City of Papillion
Planning Director
122 East Third Street
Papillion, NE 68046

With copies to: City of Papillion
City Attorney
122 East Third Street
Papillion, NE 68046

If to _____:

Article XVI - Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this Agreement shall confer rights or benefits upon any person not a party hereto. _____ shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of the CITY, which consent shall not be unreasonably withheld. It shall be unreasonable for the CITY to withhold consent without cause to an assignment of all of _____ interests in this Agreement to its Affiliate. Notwithstanding, _____ may, upon written notice to the CITY, assign this Agreement and/or any or all of its rights and obligations under this Agreement to (i) any Affiliate of _____; (ii) any successor in interest to _____ in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of the _____ assets used to provide Communications Services to residents and businesses located in the CITY of Papillion, Nebraska.

Article XVII - Signatures

The persons signing this Agreement on behalf of _____ represent and warrant that such persons and _____ have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of _____ enforceable against _____ in accordance with its terms.

Article XVIII - Miscellaneous Provisions

1. Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

2. Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

3. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; provided, however, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then _____ and the CITY shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

4. Independent Contractors. In all matters pertaining to this Agreement, the relationship of _____ and the CITY shall be that of independent contractors, and neither _____ nor the CITY shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership joint venture, employment or agency relationship between _____ and CITY; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and workers compensation responsibilities.

5. Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

6. Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any, other right, power or privilege.

7. Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be

executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

8. Survival. The obligations of the Parties under Article V, VI, IX, XI, XU and XIII shall survive any termination of this Agreement.

9. Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

10. Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

11. Governing Law. This Agreement and each of its provisions shall, be governed by and construed and interpreted according to the substantive laws of the State of Nebraska without regard to its conflicts of law or choice of law provisions.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. Force Majeure. Neither party will be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Attachments.

[End of document; Signature pages to follow]

EXHIBIT A

**City of Papillion Design Manual for Installation of Small Wireless Facilities
and Small Wireless Facility Support Poles**

[Attach copy of current Policy]