

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER POND
Council Bill No. 20
Ordinance No. 1632
Series of 2017

TITLE: AN ORDINANCE APPROVING A RADIO TOWER SPACE LICENSE AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE AND DMR NETWORKS, INC.

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, the City Police Department ("Department") owns and operates radio communication equipment to assist it in its law enforcement duties and functions; and

WHEREAS, the Department has a desire to locate certain radio communication equipment in the approximate area of North Table Mountain in Golden, Colorado; and

WHEREAS, DMR Networks, Inc. d/b/a CallCom, Inc. ("DMR") owns a radio tower site on North Table Mountain ("Tower Site"); and

WHEREAS, DMR has expressed its willingness to lease space at the Tower Site to the City for purposes of locating and operating Department radio equipment, under those terms and conditions set forth in a proposed Tower Space License Agreement; and

WHEREAS, the City Council finds and determines that it promotes the public health, safety and welfare to secure long-term appropriate locations for Department radio equipment, and that it is therefore desirable to approve the proposed license agreement, the term of which could be twenty years; and

WHEREAS, Section 12.9 of the Wheat Ridge Home Rule Charter requires long-term leasehold and rental agreements to be approved by the City Council by ordinance.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. The Tower Space License Agreement between the City and DMR, attached hereto and incorporated herein by this reference, is hereby approved. The Mayor and Clerk are authorized to execute the same.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 6 to 0 on this 27th day of November, 2017, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for December 11, 2017: continued to January 8, 2018, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 8th day of January, 2018.

SIGNED by the Mayor on this 8th day of January, 2018.



ATTEST:

Janelle Shaver
Janelle Shaver, City Clerk

Bud Starker
Bud Starker, Mayor

Approved As To Form

Gerald E. Dahl
Gerald E. Dahl, City Attorney

First Publication: November 30, 2017; December 14, 2017

Second Publication: January 11, 2018

Wheat Ridge Transcript

Effective Date: January 26, 2018

TOWER SPACE LICENSE AGREEMENT

THIS AGREEMENT is made on January 8, 2018 by and between DMR Networks, Inc. dba CallComm, Inc. ("Licensor") and The City of Wheat Ridge. ("Licensee").

THE LICENSOR AND LICENSEE AGREE AS FOLLOWS:

1. **Scope of License.**

Subject to the terms and conditions of this Tower Space License Agreement ("Agreement"), Licensor hereby grants permission to Licensee to install, maintain and operate the radio communications equipment described in **EXHIBIT A AND EXHIBIT B** annexed hereto ("Equipment") at Licensor's communications site located at North Table Mountain, Golden, Colorado ("Site").

2. **Term.**

The term of this Agreement shall commence on January 1st, 2018 ("Commencement Date") and shall continue for a period of five (5) years ("Initial Term"), with three (3) additional five (5) year renewal period (s) ("Renewal Term(s)"). The Renewal Term (s) shall commence automatically without further action on the part of Licensor or Licensee; provided, however, that either party may terminate this Agreement at any time during the first year of the Initial Term, or at the expiration of the Initial Term by giving the other party written notice not less than one hundred twenty (120) days prior, or at the expiration of any Renewal Term (s) by giving the other party written notice not less than one hundred twenty (120) days prior to the expiration of the then current term.

3. **Fees.**

(a) Licensee shall pay to Licensor an annual fee for use of the tower site. The 2018 fee is Nineteen Thousand Thirteen Dollars and Forty Four Cents (\$19,013.44) plus utility charges from the previous year. All proceeding years' fees shall be payable no later than 30 days after the 28th day of every January. Subject to the provisions of Paragraph 5 (c) hereof, the Base Fee is exclusive of charges for the furnishing of electricity and other utilities to Licensee.

(b) Effective on the anniversary of the Commencement Date of this Agreement during each year of the Initial Term and any Renewal Term(s), the then current Base Fee payable by Licensee to Licensor shall be increased by an amount equal to (i) three (3.00%) percent over the total Base Fee payable by Licensee for preceding year.

(c) Licensee agrees that payment of any fees, additional fees or other payments set forth herein shall be due upon receipt of invoice from the Licensor, and that Licensee shall pay an additional charge of five (5.0%) percent of the annual fee for each payment made more than ten (10) days after it due date. Licensee further agrees that equipment will be disconnected for non-payment after 30 days of due date.

(d) All sums payable hereunder by Licensee, including, but not limited to, the monthly Base Fee payable pursuant to this Section 3, shall be payable to DMR Networks, Inc. dba CallComm, P.O. Box 745145, Arvada, Colorado, 80006 , Att. Accounts Payable, or to such other address as Licensor shall designate.

4. Inspection of Site.

The Site shall be provided in "AS IS" condition by Licensor. Licensee has visited and inspected the Site and accepts the physical condition thereof and acknowledges that no representations or warranties have been made to Licensee by Licensor as to the condition of the Site, including the tower or towers, as the case may be, and/or the storage facilities, or as to any engineering data. Licensee is responsible for determining all aspects as to the acceptability, accuracy and adequacy of the Site for Licensee, or to maintain, insure, operate or safeguard Licensee's Equipment.

5. Installation, Maintenance and Operating Procedures.

(a) Licensee shall install, maintain and operate its equipment during the term hereof in compliance with all present and future rules and regulations of any local, State, or Federal authority having jurisdiction with respect thereto (including, without limitation, the rules and regulations of the Federal Communications Commission ("FCC") and the Federal Aviation Administration ("FAA")). Prior to the installation of its Equipment, or any modification or changes to the Equipment, if any (but excluding repairs, minor modifications and/or replacement with substantially similar equipment), Licensee shall comply with the following:

(i) Licensee shall submit, in writing, all plans for such installations, modifications or changes for Licensor's approval, such approval not to be unreasonably withheld or delayed, to DMR Networks, Inc. dba CallComm, P.O. Box 745135, CO., 80006, Att. Engineering. In order to assure Licensee's compliance with the provisions of this Agreement, the plans and specifications for Licensee's Equipment and any modifications thereto shall be submitted to engineers and consultants selected by Licensor for review and approval. All work performed at the Site in connection with the installation and modification of Licensee's Equipment shall be performed at Licensee's sole cost and expense either by Licensee's employees or by contractors approved by Licensor, such approval not to be unreasonably withheld or delayed. Licensee shall require all contractors, as a condition to their engagement, to agree to be bound by provisions identical to those included in this Agreement, specifically those relating to the indemnification of Licensor and insurance requirements. The engagement of a contractor by Licensee shall not relieve Licensee of any of its obligations under this Agreement;

(ii) All of Licensee's Equipment shall be clearly marked to show Licensee's name, address, telephone number and the frequency and location. All coaxial cable relating to the Equipment shall be identified in the same manner at the bottom and top of the line. At Licensor's request, Licensee shall promptly deliver to Licensor written proof of compliance with all applicable Federal, State, and local laws, rules and regulations in connection with any installations or modifications of Equipment; and

(iii) No work performed by Licensee, its contractors, subcontractors or materialsmen pursuant to this Agreement, whether in nature of construction, installation, alteration or repair to the Site or to Licensee's Equipment, will be deemed to be for the immediate use and benefit of Licensor so that no mechanic's or other lien will be allowed against the property and estate of Licensor by reason of any consent given by Licensor to Licensee to improve the Site. If any mechanic's or other liens will at any time be filed against the Site or the property of which the Site is a part by reason of work, labor, services, or materials performed or furnished, or alleged to have been performed or furnished, to Licensee or to anyone using the Site through or under Licensee, Licensee will forthwith cause the same to be discharged of record or

bonded to the satisfaction of Licensor. If Licensee fails to cause such lien to be so discharged or bonded within ten (10) days after it has actual notice of the filing thereof, then, in addition to any other right or remedy of Licensor, Licensor may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Licensor, including reasonable attorneys' fees incurred by Licensor either in defending against such lien or in procuring the bonding or discharge of such lien, together with interest thereon at the statutory rate, will be due and payable by Licensee to Licensor as an additional fee hereunder.

(iv) Licensor reserves the right to require Licensee at its sole cost and expense, prior to the installation of the Equipment, to have a structural study of the tower performed by an engineer approved by Licensor. Licensor shall cooperate with Licensee and shall provide Licensee with any information available which is necessary to perform such study. Upon receipt of the structural study report ("Report"), Licensee shall provide a copy to Licensor for Licensor's approval. Licensor shall have fifteen (15) days to either approve the Report ("Report Approval") or inform Licensee of the Report's deficiencies, such approval not to be unreasonably withheld or delayed. If Licensor fails to give Report Approval to the Report within forty-five (45) days of Licensee's initial submission of the Report to Licensor, Licensee shall have the right to terminate this Agreement upon ten (10) days' prior written notice to Licensor. In the Event Licensor gives Report Approval and such approved Report indicates that structural repairs or modifications are necessary to support Licensee's Equipment, Licensee shall submit to Licensor a written construction proposal ("Proposal") for the structural repairs or modifications. Licensor shall have ten (10) days from the date it receives the Proposal to either approve the Proposal or cancel the applicable Site Lease upon fifteen (15) days' prior written notice to Licensee, in which case the parties shall have no further obligation with respect to this Agreement, except as specifically provided for herein. If Licensor approves the Proposal then Licensee shall either have such repairs or modifications performed at its sole cost and expense prior to the installation of the Equipment or Licensee may cancel this Agreement by giving fifteen (15) days' prior written notice to Licensor, in which event all prepaid rent or fees shall be refunded to Licensee and the parties shall have no further obligation with respect to this Agreement, except as specifically provided for herein.

(b) Notwithstanding anything to the contrary contained herein, Licensee agrees That in all matters where Licensor's approval is required, and Licensor determines in its sole discretion that a threat of interference or other disruption with the business of Licensor or other existing licensees or tenants exists, Licensor shall have the absolute right to withhold such approval.

(c) In the event Licensee requires an electric power supply and/or usage different from that currently at the Site and excluded within the Base Fee, Licensee shall, at its sole cost and expense, obtain such power supply. Any work performed in connection with this Paragraph 5 (c) shall comply with provisions of Paragraph 5 (a) hereof. Licensee hereby agrees that any power lines installed by Licensee shall run within the current easements of Licensor, and any deviation from such easement rights shall be corrected at Licensee's expense, which sum shall be immediately due upon the rendering of an invoice as an additional fee hereunder.

(d) In the event a zoning variance is required in connection with the installation or modification of the Equipment, Licensor shall have the right, at its discretion, to either (i) cancel this Agreement, or (ii) allow Licensee, at Licensee's sole cost and expense, to obtain such variance. Licensor shall, at Licensee's request and expense, reasonably cooperate with Licensee in obtaining such variance.

(e) Licensee shall have the right of ingress and to the Site egress, at Licensee's sole cost and expense, for the purpose of maintenance and repair of Licensee's Equipment twenty-four (24) hours per day, seven (7) days per week. Licensors shall provide Licensee with a key and/or combination to the lock (s) at the Site in order to facilitate such access. In the event Licensee should require Licensors assistance to gain access to the Site, Licensee shall reimburse Licensors for all costs and expenses incurred by Licensors as a result of such emergency access. All access to the Site shall be subject to the continuing control of, as well as the reasonable security and safety procedures established from time to time by, Licensors.

(f) During the term of this Agreement, Licensee shall have the right of ingress and egress to the Site, as referenced in Paragraph 5 (e) above, damages to access roads and easements by the elements, of God, excepted. Access shall be limited only to authorized personnel of Licensee, and Licensee shall require said personnel to utilize only four-wheeled drive vehicles. All access to the Site by Licensee's authorized personnel shall be at their own risk and Licensors shall not be held responsible for any acts of the personnel or the condition of the access roads or easements.

6. **Interference.**

(a) The installation, maintenance and operation of the Licensee's Equipment shall not interfere electrically, or in any other manner whatsoever, with the equipment, facilities or operations of Licensors or with any other licensees or tenants at the Site. Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that if the installation or operation of Licensee's Equipment shall interfere:

(i) With other radio communications systems and equipment installed prior to the Commencement Date of this Agreement, Licensee shall upon request (verbal or otherwise) immediately suspend its operations (except for intermittent testing) and do whatever Licensors deems necessary to eliminate or remedy such interference. If it is determined that such interference cannot be rectified., then Licensors may, at its option, terminate this Agreement upon written notice to Licensee, whereupon Licensee shall remove the Equipment at its sole cost and expense and in accordance with Section 8 herein. In the event Licensee fails to remove the Equipment within fifteen (15) days of such termination,

Licensors may remove and store any and all of Licensee's Equipment at Licensee's sole cost and expense; or

(ii) With any other radio communications systems and equipment installed at the Site after the Commencement Date of this Agreement, Licensee shall cooperate fully with Licensors and any future tenant or licensee injured by Licensee's interference ("Future Party") to remedy the interference. Licensee shall do whatever Licensors deems reasonably necessary to cure such interference, provided, however, that all costs related to remedying such interference is due to failure, defects of deficiencies in Licensee's system, Equipment, or installation.

(b) Licensee hereby acknowledges that Licensors has licensed, and will continue to license, space at and upon the Site to third parties for the installation and operation of radio communication facilities. Licensee accepts this Agreement with this knowledge and waives any and all claims against Licensors resulting from or attributable to interference caused by present or

future equipment, facilities or methods of operation employed by Licensor in its business upon the Site. Licensee also waives any and all claims against Licensor arising from interference resulting to Licensee by virtue of equipment, facilities or operations employed by any other licensee or tenant of Licensor in its business upon the Site. In the event that any such interference occurs that materially interferes with Licensee's utilization of the Site, Licensee, as its sole remedy, in lieu of any and all other remedies at law, or in equity, may terminate this Agreement at any time thereafter by giving Licensor thirty (30) days' prior written notice to that effect, and such termination shall be effective at the end of such thirty (30) day period, provided, however, that such termination will not be effective if Licensor eliminates such interference within thirty (30) days of Licensee's termination notice. Licensee shall pay Licensor any fees due for the period up to the termination of this Agreement. Any advance payments for periods after the termination of this Agreement will be reimbursed to Licensee.

(c) Licensor reserves the right to require Licensee to relocate one or more of its antenna (s) and Licensee agrees to relocate said antenna (s) at Licensee's expense, provided that said relocation does not substantially change the operation of Licensee's equipment.

7. Maintenance of Licensee's Equipment.

Licensee at its sole cost and expense shall be responsible for the maintenance of its equipment and improvements at the Site, if any, in accordance with all applicable laws and regulations and this Agreement. All maintenance work shall be performed by licensed contractors, previously approved in writing by Licensor, such approval not to be unreasonably withheld or delayed. In the event Licensor, in its opinion, determines that any structural modifications or repairs are needed to be made to any portion of the Site due to the presence of Licensee's Equipment or other improvements, Licensor shall notify Licensee of the needed modifications or repairs, and the following procedures shall apply:

(i) If structural modifications are necessary prior to Licensee's installation or modifications of the Equipment, then either: (A) Licensee shall, at its sole cost and expense, promptly make all such noticed modifications in accordance with Section 5 hereof; or (B) If such noticed modifications are not completed within sixty (60) days of such notice, either party shall have the right to terminate this Agreement by giving the other party thirty (30) days' prior written notice.

(ii) If repairs are necessary due to the presence of Licensee's Equipment, Licensee shall, at its sole cost and expense, promptly make all such noticed repairs in accordance with Section 5 hereof; provided, however, that in the event of an emergency, Licensor shall have the right to make such modifications or repairs at Licensee's expense, upon notice to Licensee, and such sum shall be immediately due upon the rendering of an invoice as an additional fee hereunder.

Each transmitter shall be equipped with a bandpass filter or duplexer providing a minimum of 60dB attenuation to adjacent receive frequencies. Additionally, all transmitters shall be equipped with an isolator, circulator or other directional device designed to prevent ingress of stray RF into the transmitter output circuits from the antennas. The isolator, circulator or other device shall provide a minimum of 50 dB isolation between the antenna and the transmitter output. Notwithstanding anything to the contrary contained within this Agreement, Licensee shall maintain and upgrade filtering and other appropriate devices on the Licensee's Equipment so as at all times to eliminate or minimize interference and noise to a level (i) reasonably required by Licensor, and (ii) achievable through the use of state of the art technology.

8. **Removal of Licensee's Equipment.**

Provided that Licensee is not in default in the performance of its obligations Hereunder, at the expiration of this Agreement or earlier termination thereof, Licensee shall remove any and all of the Equipment. Such removal shall be performed pursuant to the guidelines set forth in Section 5 of this Agreement, without any interference, damage or destruction to any other equipment, structures or operations at the Site or any equipment of other licensee to tenants thereon. Licensee shall submit a removal plan for Licensor's written approval, interference or damage caused to the Site or equipment of other licensees or tenants by such removal shall be immediately repaired or eliminated by Licensee. If Licensee fails to make such repairs, at Licensor's sole cost and expense, within three (3) days after the occurrence of such damage, injury or interference, Licensor may perform all the necessary repairs at Licensee's cost and expense and such sum shall be immediately due upon the rendering of an invoice as an additional fee hereunder. Should licensee be in default in performance of its obligations, all equipment will remain on site until all obligations have been met as per this contract.

9. **Indemnification.**

(a) Within the limitations imposed by the Colorado Constitution and statutes, Licensee shall indemnify and hold Licensor harmless from (i) all costs of any damage done to Licensor's or other licensees' or tenants' facilities or equipment located at the Site, that occur as a result of the installation, operation or maintenance of Licensee's Equipment or other improvements; and (ii) any claims, demands, or causes of action for personal injuries, including any payments made under any workers compensation law or any plan of employee's disability and death benefits, arising out of Licensee's occupancy of the Site or the installation, maintenance and operation or removal of Licensee's Equipment, except only such damages, costs, claims, causes of action or demands caused solely by the gross negligence or willful misconduct of Licensor.

(b) Licensor shall not be responsible or liable to Licensee for any loss, damage or expense that may be occasioned by, through, or in connection with any acts or omissions of other licensees or tenants occupying the Site. Licensee hereby assumes the risk of the inability to operate as a result of any structural or power failures at the Site or failure of Licensee or Licensee's Equipment for any reason whatsoever and , within the limitations imposed by the Colorado Constitution and statutes, agrees to indemnify and hold Licensor harmless from all damages and costs to defending any claim or suit for damages of any kind, including but not limited to business interruption and attorneys' fees, asserted against Licensor by reason of such failure.

(c) Within the limitations imposed by the Colorado Constitution and statutes, Licensee shall also indemnify and hold Licensor harmless from any losses, liabilities, claims, demands or causes of action for property damage or personal injuries, including any payment made under any worker's compensation law or any plan of employees' disability and death benefits, arising out of or resulting from any claims, damages, losses, liabilities or causes of action resulting in any way from radio frequency radiation emissions from Licensee's Equipment or any other harmful effect of Licensee's Equipment.

10. **Damage or Destruction.**

Licensor and Licensee agree that Licensor shall in no way be liable for loss of use or other damage of any nature arising out of the loss, destruction or damage to the Site or to

Licensee's Equipment located thereon, by fire, explosion, windstorms, water or any other casualty or acts of third parties. In the event the Site or any part thereof is damaged or destroyed by elements or any other cause, Licensor may elect to repair, rebuild, or restore the Site or any part thereof, to the same condition as it was immediately prior to such casualty. In such event, the payments required herein shall cease as of the date of usable condition for Licensee's operation. If Licensor chooses not to repair, restore or build the Site, Licensor shall send to Licensee a notice of cancellation of this Agreement within thirty (30) days of such casualty. If this Agreement is canceled, the payments required herein shall terminate as of the date of such casualty.

11. **Insurance.**

Licensee shall, during the term of this Agreement, cause the Equipment to be covered by its policy of insurance with the Colorado intergovernmental Risk Sharing Agency (CIRSA), or any successor policy.

12. **Taxes.**

Licensee hereby acknowledges that the existence of Licensee's Equipment and other improvements at the Site may result in an increase in the assessed valuation of the Site. Licensee agrees to reimburse Licensor upon receipt of documentation showing that Licensee's Equipment or other improvements caused an increase in the assessed value of the Site, for Licensee's proportionate share of any increases in the real estate taxes payable by Licensor as a consequence of the increase in assessed valuation. Licensor hereby agrees to cooperate with Licensee, at Licensee's sole cost and expense, to obtain an abatement of any such increased assessment. In the event any sales, use or other tax shall be payable by Licensor in connection with this Agreement, Licensee shall reimburse Licensor on demand for such payments or shall furnish necessary documentation to the appropriate government authorities to show that fee payments hereunder shall be exempt from such sales, use or other tax.

13. **Notices.**

All notices, demands, requests, or other communications which are required to be given, served or sent by one party to the other pursuant to this Agreement shall be in writing, and shall be mailed, postage prepaid, by registered or certified mail, or by a reliable overnight courier service with delivery verification, to the following addresses or such other address as may be designated in writing by either party:

If to Licensor: DMR Networks, Inc. dba CallComm.
P.O. Box 745135
Arvada, CO., 80006
Att. Accts Receivable

If to Licensee: City of Wheat Ridge
7500 W. 29th Ave
Wheat Ridge, CO 80033
Att. Radio Systems Management

Notice given by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt (or on the date receipt is refused) as shown on the certification of receipt or on the records or manifest of the U. S. Postal Service or such courier service.

14. **Default.**

(a) Any one or more of the following events shall constitute a default ("Default") by Licensee under this Agreement:

(i) the failure of payment of fees, additional fees or other payments set forth herein and such failure continues for ten (10) days after Licensor provides written notice thereof to Licensee;

(ii) abandonment of either the Licensee Equipment or that portion of the Site upon which the Licensee Equipment was installed;

(iii) prosecution of any case, proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign relating to bankruptcy, insolvency, reorganization or relief with respect to Licensee, or seeking reorganization, arrangement, adjustment, winding-up liquidation, dissolution, composition or other relief with respect to Licensee or Licensee's debts;

(iv) the making by Licensee of an assignment or any other arrangement for the general benefits of creditors under any state statute; or

(iv) Licensee's failure to perform any other of its obligations under this Agreement and such failure continues for thirty (30) days after Licensor gives written notice thereof to Licensee.

(b) In the event of a Default, Licensor shall be entitled at Licensor's option to terminate this Agreement and to remove all of Licensee's Equipment, improvements, personnel or personal property located at the Site at Licensee's cost and expense. In the event that Licensor should, as a result of the Default in the performance by Licensee of its obligations hereunder, incur any costs or expenses on behalf of Licensee or in connection with Licensee's obligations hereunder, such sums shall be immediately due to Licensor upon rendering of an invoice to Licensee as an additional fee hereunder.

(c) At any time or from time to time after the removal of the Licensee's property from the Site pursuant to Paragraph 15 (b) above, whether or not the current term of this Agreement shall have been terminated, Licensor may (but shall be under no obligation to) re-licenses Licensee's former space at the Site, or any part thereof, for the account of the Licensor, for such term or terms (which may be greater than or less than the period which would otherwise have constituted the balance of the current term) and on such conditions (which may include concessions or free rent) and for such uses as Licensor, in Licensor's absolute discretion, may determine, and may collect and receive payments therefrom. Licensor shall not be responsible or liable for any failure to re-license Licensee's former space at the Site or any part thereof or for any failure to collect any payments due upon any such re-licensing.

(d) No Default pursuant to this Section 15, by operation of law or otherwise (except as expressly provided herein), no removal of Licensee's property from the Site pursuant to the terms of this Agreement, and/or no re-licensing of Licensee's former space at the Site shall relieve Licensee of Licensee's obligations or liabilities hereunder, all of which shall survive such Default, removal and/or re-licensing. Without limiting the foregoing, upon Licensee's

removal from the Site pursuant to this Section 15, Licensee shall nonetheless remain liable for all license fees and other payments hereunder for the remainder of the then-current term.

(e) All of the rights, powers, and remedies of Licensor provided for in this Agreement or now or hereafter existing at law or in equity, or by statute or otherwise, shall be deemed to be separate, distinct, cumulative, and concurrent. No one or more of such rights, powers, or remedies, nor any mention of reference to any one or more of them in this Agreement, shall be deemed to be in the exclusion of, or a waiver of, any other rights, powers, or remedies provided for in this Agreement, or now or hereafter existing at law or in equity, or by statute or otherwise. The exercise or enforcement by Licensor of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise or enforcement by Licensor of any or all of such other rights, powers, or remedies.

15. **Assignment.**

(a) Licensor reserves the right to assign, transfer, mortgage or otherwise encumber the Site and/or its interest in this Agreement. Licensee shall upon demand execute and deliver to Licensor such further instruments subordinating this Agreement, as may be required by Licensor in connection with Licensor's contemplated transaction.

(b) Licensee may not assign, transfer, or otherwise encumber its interest in this Agreement without the prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Licensor agrees that Licensee may assign this Agreement, upon prior notice to Licensor but without Licensor's consent, to (i) Licensee's parent; or (ii) any entity acquiring a controlling interest of Licensee's stock or to any party which acquires substantially all of the assets of Licensee.

16. **Miscellaneous.**

(a) ARTICLE X, SECTION 20/TABOR

The parties understand and acknowledge that the Licensee is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Licensee are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Licensee's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Licensee payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules and regulations of the City of Wheat Ridge and other applicable law. Notwithstanding any other provision of this Agreement concerning termination, upon the Licensee's failure to appropriate such funds, this Agreement shall automatically terminate.

(b) This Agreement shall not be modified, extended or terminated (other than as set forth herein) except by an instrument duly signed by Licensor and Licensee. Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement.

(c) Licensors and Licensee represent and warrant to each other that no broker was involved in connection with this transaction and each party agrees to indemnify and hold the other harmless from and against the claims of any broker made in connection with this transaction.

(d) No modification, termination or surrender of this Agreement or surrender of Licensee's space at the Site or any part thereof or of any interest therein by Licensee shall be valid or effective unless agreed to and accepted in writing by Licensor, and no act by any representative or agent of Licensor, other than such a written agreement and acceptance, shall constitute an acceptance thereof.

(e) This Agreement embodies the entire agreement between the parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

(f) This Agreement may be executed in counterpart copies, each of which shall be deemed an original, but which together shall constitute a single instrument.

(g) All section heading and captions used herein are for the convenience of the parties only and shall not be considered a substantive part of the Agreement.

(h) Each of the parties hereto acknowledges to the other that it has had this Agreement reviewed by counsel of its choice and has been assisted by such counsel in the negotiation, preparation, execution and delivery of this Agreement.

(i) This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado.

(j) This Agreement creates a license only and Licensee acknowledges that Licensee does not and shall not claim at any time, any real property interest or estate of any kind or extent whatsoever in the Site by virtue of this Agreement or Licensee's use of the Site pursuant hereto. Nothing herein contained shall be construed as constituting a partnership, joint venture or agency between Licensor and Licensee.

(k) Neither this Agreement nor any memorandum hereof shall be recorded in the land records of any county or city or otherwise without the prior written consent of Licensor.

(l) Licensee shall pay all its utility expenses on an annual basis as determined by the Licensor. Licensor shall invoice Licensee for utilities on an annual basis.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Licensor: *DMR Networks, Inc. dba CallComm.*

By: *Alex Doyle*

Name: Alex Doyle

Title: Treasurer/CFO

Licensee: *City of Wheat Ridge*

By: *Bud Starker*

Name: Bud Starker

Title: Mayor

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Licensor: ***DMR Networks, Inc. dba CallComm.***

By: _____

Name: Alex Doyle

Title: Treasurer/CFO

Licensee: ***City of Wheat Ridge***

By: 

Name: Bud Starker

Title: Mayor

EXHIBIT A – ANTENNA HARDWARE LIST

- 1- TX 101-90-08-3-03 Omni (UHF band) antenna system
- 1- Rx 101-90-08-3-03 Omni (UHF band) antenna system
- 1 -2' SHF dish antenna system (SHF band)

EXHIBIT B – INTERIOR EQUIPMENT

8 channel MSTR V P25 Phase 2 TDMA capable repeater station and associated Rf/network equipment (UHF band)

NEC 9500 SHF radio and associated back haul equipment (SHF band)

-48 VDC power plant / 21 hr battery backup modules/ 12-24 vdc power convertors stations

Redundant AC units

ATTACHMENT A – BANDS OF FREQUENCIES

UHF for MSTRV P25 repeater and SHF frequency bands NEC
9500 back haul.