

**LICENSE AGREEMENT  
AUTHORIZING USE OF CITY PROPERTY**

ITEM # 19-0305

**THIS LICENSE AGREEMENT** (the "Agreement"), made this 1<sup>st</sup> day of May, 2019 by and between the **CITY OF SANTA FE, A MUNICIPAL CORPORATION**, (the "City"), and **GAMMA PURCHASING, L.L.C.**, a Colorado limited liability company (the "Licensee"), whose address is 9601 South Meridian Blvd., Englewood, CO 80112.

**WITNESSETH:**

In consideration of Licensee's promises herein, City hereby gives the Licensee a license (the "License"), revocable and terminable as hereinafter provided, to enter on the property of the City as follows:

1. **PREMISES.** Subject to all of the terms and conditions of this License, the City allows the Licensee and its affiliates, contractors and subcontractors to use and occupy those portions of the City property located at 2551 Camino de Los Montoya's within Projected Section 11, T. 17 N., R. 9 E. N.M.P.M. Santa Fe County, NM. The area licensed herein consists of designated non-exclusive rights to "ACCESS ROUTE" and "UTILITY ROUTE" as shown and delineated on Exhibit "A" attached hereto and made a part hereof (collectively, the "Premises").
  - a. The City agrees to allow the use of the real estate for the purpose of access to and from subleased premises and any anticipated utility extensions appurtenant to Licensee's development and operation of its subleased premises via designated routes. No other uses, by the Licensee, on the property shall be allowed.
  - b. No further encroachment shall be allowed in any manner, by Licensee, beyond those actions necessary to maintain the non-exclusive infrastructure and access routes.
  - c. Failure of the Licensee's to restrict the use of the Premises as provided herein shall be deemed a substantial breach of this Agreement and shall constitute grounds for immediate termination by the City.
2. **TERM.** This License shall commence on the date entered in this License and continue until this License is terminated as provided in Article 4 herein.
3. **PAYMENT.** For this License, the Licensee shall pay the City a one-time fee in the sum of four hundred dollars (\$400), payable within thirty (30) days following execution of this Agreement. The monthly user fee of two hundred dollars (\$200) shall be submitted on or before the first day of each month during the term of this Agreement.
4. **TERMINATION.** The City may, upon 30 days written notice, revoke this License and the Licensee agrees, in that event, to peaceably and promptly surrender the Premises on the expiration date fixed in said notice, to remove all property placed on the Premises by Licensee. The Licensee may terminate this Agreement at any time upon 30 days written

Agreement at any time upon 30 days written notice to the City. Upon termination of this License by either party, there shall be no refund of the license fee or any portion thereof. This Agreement shall also terminate upon termination of sublease with Vertical Bridge NTCF, LLC, a Delaware limited liability company, dated December 6, 2018.

5. **NO INTEREST CREATED.** The Licensee agrees that no interest or estate of any kind whatsoever in the Premises is conveyed by virtue of this License or occupancy or use hereunder, and no assignment of this License or any interest herein and no sub-license shall be made by the Licensee.
6. **INSURANCE.** The Licensee, at their own cost and expense, shall carry and maintain in full force and effect during the term of this License Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, including coverage, in a form and with an insurance company acceptable to the City with limits of coverage as set forth below for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City will be notified within 30 days of cancellation for any reason. The Licensee's shall furnish the City with a copy of a "Certificate of Insurance" upon execution of this Agreement.
  - a. Licensee, and each of Licensee's contractors and subcontractors who physically enter the Property, shall, at their sole cost and expense, procure and continue to maintain in force during the Term of this License Agreement with limits of coverage in the maximum amount in which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property:
    - (i) Workers' Compensation Insurance (at statutory limits); and
    - (ii) Employer's Liability Insurance (at statutory limits); and
    - (iii) Comprehensive General Liability and Property Damage Insurance (including completed operations and contractual liability) on an occurrence basis in an amount not less than Two Million Dollars and No Cents (\$2,000,000.00) combined single limit.
  - b. All policies shall be written by an insurer with an A. M. Best rating of not less than A- (Excellent), Financial Size Category VII, and must be licensed to do business within the State of New Mexico. The general liability insurance coverage shall be endorsed to name the Lessor, Lessor's agents, employees, volunteers, officers, and elected and appointed officials (collectively the Lessor's Releases) as additional insureds.
  - c. No self-insurance shall be permitted at any time without the prior written consent of the City, which may be withheld for any or no reason.
  - d. Licensee agrees to indemnify, defend and hold City harmless from and against any claim of injury, loss, damage or liability costs or expenses (including reasonable attorneys' fees and court costs) arising out of Licensee's breach of this

License Agreement. Circumstances under which Lessor will not be held liable include, but are not limited to:

(i) any work or act done in, on or about their subleased premises, the Access Route or the Utility Route, or any part thereof at the direction of Licensee, its agents, contractors, subcontractors, servants, employees, or invitees on behalf of Licensee, including but not limited to the installation, use, maintenance, repair or removal of the Communication Facilities, except to the extent such work or act is done or performed by City or its agents or employees, contractors, volunteers, officers or officials; and

(ii) any negligence or other willful misconduct on the part of Licensee or any of its agents, contractors, subcontractors, servants, employees, sub-tenants, licensees or invitees; and

(iii) any accident, injury or damage caused by or attributable to Licensee or its agents, contractors, subcontractors, servants, employees, sub-tenants, licensees or invitees to any person or property occurring at the Property or any part thereof, except to the extent caused by the negligence or willful misconduct of City, its employees, agents, volunteers, officers or officials; and

(iv) any failure on the part of Licensee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement on its part to be performed or complied with; and

(v) Any failure of Lessee to comply with applicable local, state or federal laws.

Waiver of Subrogation. Licensee hereby grants to City a waiver of any right to subrogation which any insurer of Licensee may acquire against City by virtue of the payment of any loss under such insurance.

8. **NEW MEXICO TORT CLAIMS ACT.** Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et.seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive *sovereign immunity*, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision of this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

9. **RECORDING-SHORT FORM MEMO.** This License Agreement shall be recorded in its entirety.

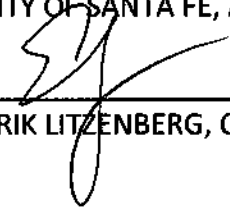
10. **ASSIGNMENT.** Licensee may, either voluntarily or by operation of law, assign, sublet or transfer some or all of its rights and/or obligations under this Agreement to: (i) an affiliate; and/or (ii) any other person or entity directly or indirectly controlling, controlled by or under common control with any of the foregoing without Licensors' consent and Licensors shall not have any right to delay, alter or impede such assignment or transfer. Licensee shall provide the City notice upon any such assignment or transfer as described herein.

11. **OBLIGATION OF LICENSEE.** The Licensee shall comply with the following conditions:

- a. This License is subject to the provisions of SFCC Section 14.8.4 and other applicable City code requirements.
- b. The approval of this License does not constitute issuance of a building permit. Required permits shall be applied for from the Building Permit Division.
- c. This License is subject to rights of the City and utility providers to existing utility apparatuses on, over and under subject premises.
- d. This License is subject to terms, provisions, obligations as contained in Lease Agreement by and between the City of Santa Fe, NM and Qwest Corporation, a Colorado Corporation, d/b/a Century Link QC, dated February 25, 2016 and bearing Item No. 16-104, records of the City of Santa Fe.

APPROVED THIS 1<sup>st</sup> DAY OF May, 2019.

CITY OF SANTA FE, A MUNICIPAL CORP.

  
ERIK LITZENBERG, CITY MANAGER

ATTEST:

  
YOLANDA Y. VIGIL, CITY CLERK *aw*

APPROVED AS TO FORM:

  
ERIN MCSHERRY, CITY ATTORNEY

APPROVED:

  
MARY P. MCCOY, FINANCE DIRECTOR *m*  
21117.460150  
BUSINESS UNIT/LINE ITEM

LICENSEE:  
GAMMA PURCHASING, L.L.C.

See attached sheet  
DAVID ZUFALL

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BUSINESS UNIT/LINE ITEM

LICENSEE:  
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DAVID ZUFALL

ACKNOWLEDGEMENT

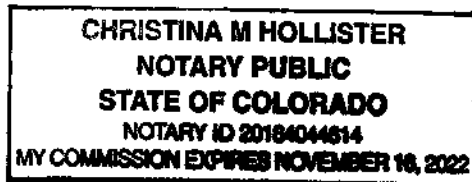
STATE OF COLORADO

COUNTY OF ARAPAHOE ) ss.

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2019, by David Zufall, Vice President of Wireless Infrastructure for Gamma Purchasing, LLC.

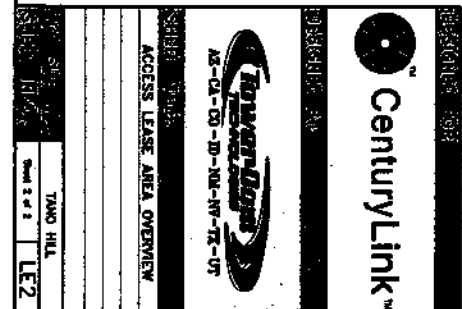
My Commission Expires: 11/16/2022  
(Seal)

Christina M. Hollister  
Notary Public



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1. DATE OF REPORT  
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 5. NAME OF CAPTAIN  
 6. NAME OF MASTER  
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# EXHIBIT A