COTTONWOOD HEIGHTS

ORDINANCE NO. 325

AN ORDINANCE GRANTING A MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES IN THE PUBLIC WAY TO CROWN CASTLE FIBER LLC

WHEREAS, Crown Castle NG West, LLC, on behalf of itself, its operating affiliates (including, without limitation, Crown Castle Fiber LLC), and its permitted successors and assigns ("*Provider*"), desires to provide third party broadband wireless services within the city of Cottonwood Heights ("*City*") and, in connection therewith, to establish a network in, under, along, over, and across present and future public roads, streets, alleys and other rights-of-way (the "*Public Way*") within City's corporate limits ("*City Limits*"), consisting of antennas, radios, fiber-optic cable, and conduit, together with all necessary and desirable appurtenances (collectively, "*Wireless Facilities*"), for the operation of a wireless broadband small cell network for communication services, all as authorized by and subject to COTTONWOOD HEIGHTS CODE Chapter 14.28 or its successor; and

WHEREAS, City, in the exercise of its police power, its ownership, use or rights over and in the Public Way, and pursuant to its other regulatory authority, heretofore has granted a franchise to Provider pursuant to its Ordinance 306 and believes it now is in the best interest of the public to grant Provider access rights to the Public Way pursuant to a non-exclusive master license agreement; and

WHEREAS, City's governing body (the "*City Council*") met in regular session on 4 June 2019 to consider, among other things, approving the execution and delivery of such a master license agreement and to otherwise taking all actions necessary to grant such access rights to Provider; and

WHEREAS, after careful consideration, the City Council believes it to be in the best interests of the health, safety and welfare of City's residents to authorize City's execution and delivery of such a master license agreement substantially in the form attached hereto (the "*Agreement*");

NOW THEREFORE, be it ordained by the city council of the city of Cottonwood Heights as follows:

Section 1. **Purpose**. The purpose of this Ordinance is to grant to Provider the non-exclusive right to use the present and future Public Way for its business purposes, under the constraints and for the compensation specified in the Agreement that is attached hereto; provided, however, that the form of attached Agreement is subject to such further modifications as may be approved by City's mayor in consultation with City's manager and attorney.

Section 2. **Title**. This Ordinance shall constitute the "Crown Castle Master License Agreement Ordinance" referred to in the Agreement.

Section 3. **Grant of Access Rights**. Provider is hereby granted, in accordance with the

terms and conditions of the Agreement, the right and privilege to construct, maintain and operate its Wireless Facilities in, under, along, over and across the City's present and future Public Way.

Section 4. **Term**. The term of the Agreement is for a period of ten years from and after the filing of the executed Master License Agreement with the office of the City's recorder, with a renewal of an additional ten year term as provided in the Agreement. Provider shall pay any and all costs of publishing this Ordinance.

Section 5. **Acceptance**. Provider may execute and deliver the Agreement to City within 30 days after the effective date of this Ordinance; otherwise, this Ordinance and the rights granted hereunder to Provider shall be null and void as of and after the effective date of this Ordinance.

Section 6. **Condition**. The efficacy of this Ordinance is conditioned on Provider's timely unqualified acceptance of that franchise under Ordinance 306 as provided therein.

Section 7. **Severability**. All parts of this Ordinance are severable, and if any section, clause or provision of this Ordinance shall, for any reason, be held or found to be invalid or unenforceable, the invalidity or unenforceability of any such section, clause or provision shall not affect the remaining sections, clauses or provisions of this Ordinance.

This Ordinance, assigned no. 325, shall take immediate effect as soon as it shall be published or posted as required by law, deposited and recorded in the office of the City Recorder, and accepted as required herein.

PASSED AND APPROVED this 4th day of June 2019.

ATTEST:

By: _____
Paula Melgar, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By: _____
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea ✓	Nay ___
Michael L. Shelton	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Tali C. Bruce	Yea ✓	Nay ___
Christine Watson Mikell	Yea ✓	Nay ___

DEPOSITED in the Recorder's office this 4th day of June 2019.

POSTED this 4 day of June 2019.

Master License Agreement for Wireless Facilities in the Public Way

THIS MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES IN THE PUBLIC WAY (this "*Agreement*"), dated as of its date of its recordation with the Cottonwood Heights City Recorder (the "*Effective Date*"), is made and entered into by and between City of **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*"), and **CROWN CASTLE FIBER LLC,** a New York limited liability company (including its successors and assigns, "*Provider*").

RECITALS:

A. Provider desires a non-exclusive agreement to install, at its sole cost and expense, a network of Wireless Facilities within City's Public Way in order to provide wireless services and expand the available data transmission bandwidth for mobile devices.

B. City owns or controls its Public Way within City's geographical boundaries and has agreed to grant access to Provider in accordance with the terms and conditions of this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration and in contemplation of subsequent approval by legislative action of City's legislative body (the "*Council*") as hereinafter provided, the parties mutually agree as follows:

ARTICLE 1
ORDINANCE

1.1 **Defined Terms**. All capitalized terms not otherwise defined in this Agreement shall have the meanings given them in Cottonwood Heights Code Chapter 14.28 or its successor (the "*City Wireless Code*").

1.2 **Ordinance**. The Council has adopted an ordinance entitled "Crown Castle Master License Agreement Ordinance" (the "*Ordinance*") approving City's execution of this Agreement. Execution of this Agreement by Provider constitutes Provider's unqualified acceptance of the Ordinance. The Ordinance is hereby incorporated in and made an integral part of this Agreement by this reference.

1.3 **Description**. The Ordinance confers upon Provider, and its successors and assigns, the non-exclusive right, privilege, and access (the "*Access Rights*"), subject to the terms of this Agreement, to construct, install, maintain, repair, replace, modify, relocate, remove, and operate the Wireless Facilities in approved locations in the Public Way and attach Wireless Facilities to a Structure in the Public Way, as described in this Agreement. This Agreement does not grant to Provider any interest in any property.

1.4 **Term**. The term of this Agreement is for a period from the Effective Date until the tenth anniversary of the Effective Date. If there is no default under this Agreement and Provider is compliant with all applicable law, rules, and regulations, this Agreement will automatically be extended for one additional period of ten years at Provider's discretion unless Provider notifies

City in writing of its intent to not renew this Agreement at least three months prior to the expiration of the term.

ARTICLE 2
PERMIT APPROVAL

2.1 **Application and Review**. Provider shall comply with the requirements of City Wireless Code. To locate any Wireless Facilities in the Public Way, Provider shall submit an application for a Permit to work in the Public Way (a "*Public Way Permit*"), the form of which will be determined by City. An approved Public Way Permit shall approve the location and plans for the location of a Wireless Facility. Depending on the scope of Provider's proposed work, Provider may also need to apply for additional permits such as a traffic control permit and electrical permit. The Public Way Permit shall be reviewed as provided in City Wireless Code and applicable state and federal law.

2.2 **Access; Franchise**. Provider shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities. Provider shall obtain a franchise from City for the location of such fiber optic lines in the Public Way.

2.3 **Unauthorized Facilities**. Any Wireless Facility that does not have an approved Public Way Permit, does not receive other required permits, or does not meet the specifications of this Agreement or City Wireless Code, shall be deemed unauthorized. City may cause Provider to remove any unauthorized facilities at Provider's cost upon at least 30 days' prior written notice. Failing such removal by Provider, City may remove such unauthorized Wireless Facilities and invoice Provider for the cost of such removal, which Provider shall fully pay within ten business days after receipt.

ARTICLE 3
FEES

3.1 **Compensation**.

(a) *Small Cell Fees*. Provider shall pay all fees and rates due City pursuant to City Wireless Code (the "*Small Cell Fees*").

(b) *Other Fees and Costs*. Provider shall also pay any reasonable fees or costs permitted by law and charged by City or Structure owner and associated with any related permits or approvals, and any and all other *ad valorem* taxes, special assessments or other lawful obligations of Provider to City.

3.2 **Fee Payment**. Provider will pay the Small Cell Fees annually on or before the anniversary of the Effective Date as directed by City. Any Small Cell Fee paid after the due date shall incur 12% annual interest on the unpaid amount, compounded daily from the due date until payment is received. If Provider holds over past the expiration of this Agreement, each of the Small Cell Fees shall increase to 200% of the most recent respective Small Cell Fees paid annually. Payment of a holdover fee does not extend or renew this Agreement.

ARTICLE 4
PROVIDER'S USE OF PUBLIC WAY

4.1 **Rights to Access and Use Public Way**.

(a) *Location*. Provider shall have the right to use a portion of a Public Way in the precise location described in the approved Public Way Permit to locate and install Wireless Facilities on an approved Structure, subject to the terms and conditions of this Agreement.

(b) *No Other Rights*. The rights granted to Provider herein do not include the right to excavate in, occupy or use any City park, recreational areas or other property owned by City (or regulated by City, such as riparian areas of water source protection areas).

(c) *Maintenance Standard*. Provider shall install and maintain Wireless Facilities and Structures in a good and workmanlike manner.

4.2 **Provider Duty to Relocate**. Whenever City requires the relocation or reinstallation (collectively, "*relocation*") of any of the Wireless Facilities situated within the Public, Provider shall, at Provider's sole cost and expense, effect such relocation Way as may be reasonably necessary to meet City's requirements, commencing within 60 days after Provider's receipt of City's notice to relocate. Provider's relocation may be required by City for any lawful purpose, including without limitation the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the Public Way, whether such conflicts arise in connection with a City project or a project undertaken by some other person or entity, public or private. City will cooperate with Provider to provide alternate space where available within the Public Way. The new location shall be subject to obtaining an approved Public Way Permit. Such relocation shall be accomplished by Provider at no cost or expense to City. If the relocation is ordered to accommodate the facilities of an entity other than City or Provider, the cost and expense of such relocation shall be borne by such other entity.

4.3 **Approval to Move Provider Property; Emergency Exception**. Except as otherwise provided herein, City shall not without Provider's prior written approval intentionally alter, remove, relocate or otherwise interfere with any portion of the Wireless Facilities. Any written approval request shall be promptly reviewed (within 30 calendar days) and processed by Provider and approval shall not be unreasonably withheld, conditioned, or delayed. If, however, it becomes necessary in City's reasonable judgment to move any of the Wireless Facilities because of a fire, flood, emergency, earthquake, disaster or other imminent and material threat thereof, or to relocate any portion of the Wireless Facilities upon Provider's failure to timely do so following a written request by City under this Section 4.3, these acts may be done by City without prior written approval of Provider at Provider's sole cost and expense.

4.4 **Compliance with Rules and Regulations and Applicable Laws**. Wireless Facilities located on, upon, over or under the Public Way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with such lawful rules and regulations as City may issue. Provider shall acquire, and pay any fees with respect to, such permits as may be required by such rules and regulations, and City may inspect the manner of such work and require remedies as may be necessary to assure compliance. All Wireless Facilities installed or used pursuant to this Agreement shall be used, constructed, repaired, replaced, and maintained in accordance with applicable federal, state and City laws, rules, and regulations, including without limitation environmental laws, now existing or from time to time adopted or promulgated.

4.5 **Repair Damage**. If during the course of work on Wireless Facilities, Provider causes damage to or alters any portion of the Public Way, any Structure, or any City facilities or other public property or facilities, Provider shall (at its own cost and expense and in a manner reasonably approved by City), replace and restore such portion of the Public Way, Structure, or any City facilities or other public or private property or facilities, in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character. If Provider does not complete such work within a reasonable time specified by City, City may complete such work and bill Provider for the cost and expense, to be paid within 30 days' following the date of City's invoice for such work.

4.6 **Guarantee of Repairs**. For a period of three years following the completion of any work by Provider in the Public Way or any repair work by Provider performed pursuant to Section 4.5 above, Provider shall maintain, repair, and keep in good condition those portions of the Public Way, Structures, property, or facilities restored, repaired or replaced by Provider, to the reasonable satisfaction of City Engineer, reasonable wear and tear excepted.

4.7 **Safety Standards**. Provider's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices in accordance with applicable safety regulations or standards imposed by law.

4.8 **Inspection by City**. The Wireless Facilities shall be subject to inspection by City to assure compliance by Provider with the terms of this Agreement. Provider shall pay any fees charged or costs or expenses incurred by City in connection with such inspections.

4.9 **Duty to Disclose**. Provider shall provide to City information regarding any failure by Provider to comply with any provision of this Agreement or of any applicable customer or consumer service standards promulgated or in effect in City's jurisdiction at any point during the term of this Agreement.

4.10 **Provider's Duty to Remove Wireless Facilities from the Public Way**.

(a) *Provider's Duty to Remove*. Subject to subsection (c) below, Provider shall remove from the Public Way all or any part of the Wireless Facilities, when one or more of the following conditions occur:

(i) Cessation of Operations. Provider ceases to operate such Wireless Facilities for a continuous period of 12 months, except when the cessation of service is a direct result of a natural or man-made disaster;

(ii) Noncompliance. The construction or installation of such Wireless Facilities does not meet the requirements of this Agreement or the Public Way Permit; or

(iii) Revocation. The Agreement or use of a Structure is terminated or revoked pursuant to notice as provided herein.

(b) *Time for Removal*. Upon receipt by Provider of written notice from City setting forth one or more of the occurrences specified in subsection (a) above, Provider shall have 90 days from the date upon which said notice is received to remove such Wireless Facilities, or, in the case of subsection (a)(i), to begin continuously operating the Wireless Facilities.

(c) *Removal by City*. If Provider fails to timely remove the Wireless Facilities

as set forth in this section, City may remove such facilities and bill Provider for the cost and expense incurred by City, which shall be paid within 30 days' after the date of City's invoice for such work.

ARTICLE 5
POLICE POWER

City expressly reserves, and Provider expressly recognizes, City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties. This Agreement is subject to any such ordinances, rules, and regulations.

ARTICLE 6
TRANSFER OF RIGHTS

6.1 **No Unauthorized Transfers**. Except as provided in section 6.3 and provided that there is not an uncured default of any provision of this Agreement or Public Way Permit, Provider shall not sell, transfer, lease, assign, sublet, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise make available, the Access Rights or any rights or privileges under this Agreement, (each, a "*Transfer*"), to a Proposed Transferee without City's prior written consent. In this Article 6, (a) a "*Proposed Transferee*" means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of Provider, and (b) a "*Person*" means any individual, sole proprietorship, partnership, limited liability company, association, corporation, or other form of entity or organization, and includes any natural person.

6.2. **Consent Standards**. In determining whether to grant its consent, City may inquire into the qualifications of the Proposed Transferee, and Provider shall assist City in obtaining timely, accurate responses to the inquiry. City may condition or deny its consent based on any or a combination of the following or similar criteria. The Proposed Transferee shall indicate by affidavit whether it or any of its principals:

(a) *No Statutory Violations*. Has ever been convicted or held liable for acts involving any violation of federal, state or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(b) *No Fraud, Etc*. Has ever had a judgment entered against it in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(c) *No Related Material Claims*. Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a system similar to the Wireless Facilities, except that any such claims, suits or proceedings relating to insurance claims, theft of its services, or employment matters need not be disclosed;

(d) *Financial Status*. Is financially solvent, which shall be substantiated by submitting financial statements that have been audited by a certified public accountant, along with any other financial data that City may reasonably require; and

(e) *Relevant Experience*. Is experienced in the business of operating similar wireless facilities and has the financial and technical capability to enable it to maintain and operate the Wireless Facilities to be Transferred for the remaining term of this Agreement.

6.3 **Authorized Transfers**. Notwithstanding the foregoing, City's consent shall not be required in connection with the following circumstances, provided that Provider is not released from the obligations under this Agreement and the Proposed Transferee assumes this Agreement and agrees in writing to comply with the terms and conditions of this Agreement, including sections 6.4 and 6.5 below:

(a) *Internal Transfer*. The Transfer from a parent entity to a wholly-owned subsidiary, or from one wholly-owned subsidiary to another wholly-owned subsidiary of a parent entity;

(b) *Hypothecation*. Any Transfer in trust, a mortgage, or other instrument of hypothecation of the assets of Provider, in whole or in part, to secure an indebtedness, provided that such pledge of the assets of Provider shall not impair or mitigate Provider's responsibility and capability to meet all its obligations under this Agreement, and provided further that such Proposed Transferee subordinates to this Agreement; or

(c) *Licenses, Etc*. Interconnection, license, or use agreements pursuant to which the Wireless Facilities may be used by another qualified entity providing telecommunication services within City, provided that any such interconnection, license, or use agreement is subordinate to this Agreement.

6.4 **Binding Effect**. Transfer by Provider shall not constitute a waiver or release of any rights of City in or to its Public Way and any Transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement and not create any conflict with any applicable laws, rules, or regulations.

6.5 **Mandatory Acceptance**. An otherwise valid Transfer will only be effective upon the Proposed Transferee becoming a signatory to this Agreement by executing an unconditional written acceptance of this Agreement.

6.6 **Exception for Carriers**. As contemplated by subsection 6.3(c) above, the parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Wireless Facilities deployed by Provider in the Public Way pursuant to this Agreement may be owned and/or operated by Provider's third-party wireless carrier customers ("*Carriers*") and installed and maintained by Provider pursuant to license agreements between Provider and such Carriers. Such license agreements shall be subordinate to this Agreement. The Wireless Facilities covered by such license agreements shall be treated as Provider's for all purposes under this Agreement, including the following: (a) Provider remains responsible and liable for all performance obligations under the Agreement with respect to such Wireless Facilities; (b) City's sole point of contact regarding such Wireless Facilities as it relates to this Agreement shall be Provider; and (c) Provider shall have the right to remove and relocate such Wireless Facilities pursuant to the terms of this Agreement.

ARTICLE 7
PROVIDER INDEMNIFICATION; INSURANCE

7.1 **No City Liability**. City shall in no way be liable or responsible for any loss or damage to property, or any injury to or death of any person that may occur in the construction, operation, or maintenance by Provider of the Wireless Facilities. City will be liable only for its own conduct, subject to and without waiving any defenses (including limitation of damages)

provided for in the Utah Governmental Immunity Act (UTAH CODE ANN. 63G-7-101, *et. seq.*) or its successor. Provider agrees that the Public Way is delivered in an "**AS IS, WHERE IS**" condition, with all faults. City makes no representation or warranty regarding the condition of the Public Way and **disclaims any and all express and implied warranties relating to the Public Way or its condition, including the implied warranties of habitability and fitness for a particular purpose**.

7.2 **Indemnification**.

(a) *Indemnification by Provider*. Provider shall indemnify, save harmless, and defend City and its officers, employees, agents and insurers (collectively, "*Related Parties*") from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including reasonable attorneys' fees, arising out of or incurred in connection with Provider's intentional, reckless, or negligent performance hereunder or under the Ordinance. Provider's duty to defend City and its Related Parties shall exist regardless of whether City or Provider may ultimately be found to be liable for anyone's negligence or other conduct. If tender of defense based upon this indemnity provision is rejected by Provider and Provider is later found by a court of competent jurisdiction to have been required to indemnify City and its Related Parties, then in addition to any other available remedies Provider shall pay the reasonable costs, expenses, and attorneys' fees incurred by City and its Related Parties in establishing and proving the right to such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed, however, to require Provider to indemnify the indemnitee against the indemnitees' own negligence. The provisions of this subsection 7.2(a) shall survive the termination or expiration of this Agreement.

(b) *Limitations on City's Liability*. Subject to section 4.3, City shall not willfully or intentionally damage Provider's Wireless Facilities or property. City otherwise assumes and has no responsibility for any damage or loss that may occur to Provider's Wireless Facilities or other property. City has no responsibility for any equipment maintenance or for Provider's employees. Nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship between City and Provider or any of Provider's employees.

7.3 **Insurance**.

(a) *Required Insurance*. Provider at its own cost and expense shall secure and maintain, and shall ensure that any subcontractor to Provider shall secure and maintain, continuously throughout the term of this Agreement the following policies of insurance:

(i) Commercial General Liability Insurance. Commercial general liability insurance with City and its designee(s) named as additional insureds on a primary and non-contributory basis in comparison to all other insurance, including City's own policy or policies of insurance, in the minimum amount of $2,000,000 per occurrence with a $3,000,000 general aggregate and $3,000,000 products completed operations aggregate. The policy shall protect City and Provider from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Provider's operations under this Agreement whether performed by Provider itself, any subcontractor, any Carrier, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, products and completed operations. Provider may utilize an "umbrella" policy to meet the required limits.

(ii) Commercial Automobile Liability Insurance. Commercial automobile liability insurance naming City as an additional insured that provides coverage for owned, hired, and non-owned automobiles used in connection with this Agreement, with a combined single limit of $2,000,000 per occurrence. Provider may utilize an umbrella policy to meet the required limits. If the policy only covers certain vehicles or types of vehicles, such as scheduled autos or only hired and non-owned autos, Provider shall only use the vehicles that are covered by such policy in connection with any work performed under this Agreement.

(iii) Workers' Compensation and Employer's Liability. Worker's compensation and employer's liability insurance sufficient to cover all of Provider's employees pursuant to Utah law. If any work is subcontracted, Provider shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the subcontractor's employees unless a waiver of coverage is allowed and acquired pursuant to Utah law.

(b) *General Insurance Requirements*.

(i) Claims Made Coverage Form. Any required insurance coverage that is written on a "claims made" form rather than on an "occurrence" form shall (A) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (B) be maintained for a period of at least three years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to City.

(ii) Company Rating. All policies of insurance shall be issued by insurance companies authorized to do business in the state of Utah and either (A) currently rated A- or better by A.M. Best Provider, or (B) Listed in the United States Treasury Department's then current *Listing of Approved Sureties (Department Circular 570)*, as amended.

(iii) Certificates. Provider shall furnish certificates of insurance acceptable to City verifying the foregoing matters concurrent with the execution hereof and thereafter upon renewal and within 30 days after City's written request.

(iv) Subcontractor Coverage. If any work is subcontracted, Provider shall require its subcontractor to secure and maintain all minimum insurance coverages required of Provider hereunder at no cost to City. Provider shall remain liable for all work of its subcontractors.

(v) Notice of Cancellation. All required certificates and policies shall provide that insurers of coverage thereunder shall provide at least 30 days' prior written notice of cancellation for any reason and 10 days' notice of non-payment of premium to City. Provider shall provide to City written notice of any notice of cancellation for any reason and 10 days' notice of non-payment of premium to City of a required insurance policy hereunder at least 30 days prior to such cancellation or non-renewal, accompanied by evidence of a successor policy complying with the requirements of this Agreement.

7.4 **Damages Waiver**. Notwithstanding any provision in this Agreement to the contrary, in no event shall any party be liable to any other party for indirect, special, punitive, or consequential damages, including, without limitation, lost profits.

7.5 **Bonds**. Provider shall comply with all bonding requirements required by City in its code of ordinances, including those required to obtain permits.

ARTICLE 8
ENFORCEMENT; TERMINATION

8.1 **Provider Defaults**. Provider shall be in default under this Agreement in the event of any of the following:

(a) *Monetary Default*. Provider fails to make timely payments of the Small Cell Fees or any other fee due to City under the terms of this Agreement, and does not correct such failure within 30 days.

(b) *Non-Monetary Default*. Provider, by act or omission, defaults under any provision of this Agreement and such default is not cured within 30 days following written notice by City to Provider, or such longer cure period as permitted by City if Provider (i) commences corrective action during 30 days following notice of the failure, and (ii) diligently pursues such corrective action to completion.

(c) *Insolvency*. Provider becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its Wireless Facilities are sold under an instrument to secure a debt and is not redeemed by Provider within 60 days.

(d) *Misrepresentations*. A representative of Provider knowingly engages in conduct or makes a material misrepresentation with or to City, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

(e) *Abandonment*. Provider abandons use of all Wireless Facilities for 12 consecutive months.

8.2 **City Remedies**. In the event of an uncured Provider default, City shall maintain all it rights and remedies, at law and in equity, including the ability to charge fines, recover fees and costs, and remove the Wireless Facilities at Provider's cost. Without limitation, City may do one or all of the following:

(a) Fine Provider $100 per day per violation until the violation is cured.

(b) Terminate or suspend any franchise, permits, or licenses held by Provider.

(c) Withhold issuing any new permits to the violating party.

(d) If the violation is not cured within 180 days, or such longer cure period as may be permitted by City, City may remove and impound the Wireless Facilities until the violation has been cured.

(e) City may terminate or revoke this Agreement and all rights and privileges hereunder.

8.3 **City Defaults**. If there is a material breach by City with respect to any of City's obligations under this Agreement, Provider shall give City written notice of such breach. City shall have 30 days after such notice to cure the breach, provided that such cure period shall be extended as may be reasonably required if City commences the cure within the 30 day period and thereafter

diligently pursues the cure to completion. Provider may not maintain any action or effect any remedies for default against City unless and until City has failed to cure the breach within the time periods provided in this section. In the event of an uncured default by City, Provider shall maintain all of its rights and remedies provided at law; provided, however, that no remedy that would have the effect of amending the provisions of this Agreement shall become effective without a formal amendment of this Agreement.

8.4 **Provider Termination**.

(a) *Agreement Termination*. Provider may terminate this Agreement by giving at least 30 days' prior written notice to City. Provider shall not be subject to any penalty or fee for terminating this Agreement prior to the end of the term of the Agreement. Responsibility for Small Cell Fees shall cease upon removal of Provider's Wireless Facilities and following payment of the Small Cell Fees for the year during which Provider's Facilities are removed.

(b) *Partial Termination of Use*. Without terminating the Agreement, following at least 30 days' prior written notice by Provider to City, Provider may terminate paying the Small Cell Fees for Wireless Facilities and/or Structures from which Provider has discontinued use and removed from the Public Way. City shall not provide prorated or partial reimbursement for termination of use of Provider's Wireless Facilities during any partial year.

ARTICLE 9
NOTICES

9.1 **City Designee and Address**. Unless otherwise specified herein, all notices from Provider to City pursuant to or concerning this Agreement shall be delivered to City at 2277 East Bengal Blvd., Cottonwood Heights, UT 84121, with a copy to the Cottonwood Heights City Attorney at 170 South Main Street, Suite 1500, Salt Lake City, UT 84101, and such other offices or substitute address(es) as City may designate by written notice to Provider.

9.2 **Provider Designee and Address**. During the term of this Agreement, Provider shall maintain a registered agent on file with the Utah Division of Corporations for services of notices by mail, and an office and telephone number for the conduct of matters relating to this Agreement during normal business hours. Unless otherwise specified herein, all notices from City to Provider pursuant to or concerning this Agreement or the Access Rights shall be delivered to:

Provider: CROWN CASTLE NG WEST LLC
C/O CROWN CASTLE
2000 CORPORATE DRIVE
CANONSBURG, PA 15317
ATTN: KEN SIMON, GENERAL COUNSEL

with a copy to: CROWN CASTLE NG WEST LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: SCFS Contracts Management

24/7 Network Operation Center: 888-632-0931 or SCN.NOC@crowncastle.com

ARTICLE 10
MISCELLANEOUS

10.1 **Severability**. If any portion of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof or thereof, all of which will remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof.

10.2 **No Waiver or Estoppel**. Neither City nor Provider shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any of such terms and conditions.

10.3 **Amendment Approval Required**. Except as otherwise provided above, no amendment or amendments to this Agreement shall be effective until mutually agreed upon by City and Provider and an ordinance or resolution approving such amendments is approved by City Council, if appropriate.

10.4 **GRAMA**. Whenever Provider is required to deliver to City, or make available to City for inspection, any records of Provider, and such records are delivered to or made available to City with a written claim of business confidentiality which meets, in City's judgment, the requirements of the Utah Government Records Access and Management Act, UTAH CODE ANN. 63G-2-101 *et seq.* ("*GRAMA*"), such records shall be classified by City as "protected" within the meaning of GRAMA, and shall not be disclosed by City except as may otherwise be required by GRAMA, by court order, or by applicable City ordinance or policy. Provider specifically waives any claims against City related to disclosure of any materials as required by GRAMA.

10.5 **Timeliness of Approvals**. Whenever either party is required by the terms of this Agreement to request the approval or consent of the other party, such request shall be acted upon at the earliest reasonable convenience of the party receiving the request, and the approval or consent so requested shall not be unreasonably denied, delayed, conditioned or withheld, and shall comply with applicable law. Time is the essence of this Agreement.

10.6 **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Utah. Jurisdiction and venue in any litigation under this Agreement shall reside in the Third Judicial District Court of Salt Lake County, Utah or in U.S. District Court for the District of Utah.

10.8 **Entire Agreement**. This Agreement contains all of the agreements of the parties with respect to any matter addressed in this Agreement, excluding any permits issued in connection with this Agreement, and supersedes all prior discussions, agreements or understandings pertaining to any such matters for all purposes.

10.9 **Authority**. Each individual executing this Agreement on behalf of City and Provider represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of City or Provider (as applicable).

IN WITNESS WHEREOF this Agreement is executed in duplicate originals as of the Effective Date.

CITY:

COTTONWOOD HEIGHTS,
a Utah municipality

ATTEST:

By: _____
Paula Melgar, Recorder

By: _____
Michael J. Peterson, Mayor

PROVIDER:

CROWN CASTLE FIBER LLC,
a New York limited liability company

By: _____

Name: **Erica Morr**
Director - Contract Development
Small Cell & Fiber Solutions

Title: _____

COMMONWEALTH ~~STATE~~ OF PENNSYLVANIA)
: ss
COUNTY OF WASHINGTON)

On MAY 15 2019, personally appeared before me Erica Morr, who, being by me duly sworn, acknowledged that ~~he~~/she is the DIRECTOR of **Crown Castle Fiber LLC**, a New York limited liability company; that the foregoing instrument was signed on behalf of said entity; and that said person executed such instrument on behalf of said entity.

_____
Notary Public
Residing in: PENNSYLVANIA

My Commission Expires:
5/2/2021

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
David C. Kutschbach, Notary Public
Cecil Twp., Washington County
My Commission Expires May 2, 2021
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

4770 S. 5600 W.
WEST VALLEY CITY, UTAH 84118
FED.TAX I.D.# 87-0217663
801-204-6910

Deseret News | Utah Media Group | The Salt Lake Tribune

PROOF OF PUBLICATION **CUSTOMER'S COPY**

CUSTOMER NAME AND ADDRESS	ACCOUNT NUMBER
COTTONWOOD HEIGHTS, PAULA MELGARD 2277 E BENGAL BLVD COTTONWOOD HEIGHTS UT 84121	9001356263 DATE 6/10/2019

ACCOUNT NAME
COTTONWOOD HEIGHTS,

TELEPHONE	ORDER # / INVOICE NUMBER
8019447000	0001257155 /

PUBLICATION SCHEDULE
START 06/09/2019 END 06/09/2019

CUSTOMER REFERENCE NUMBER
ORDINANCE 325

CAPTION
COTTONWOOD HEIGHTS PUBLIC NOTICE Notice is hereby given that during a City C

SIZE	
18 LINES	1 COLUMN(S)

TIMES	TOTAL COST
3	35.24

COTTONWOOD HEIGHTS
PUBLIC NOTICE

Notice is hereby given that during a City Council meeting of June 4, 2019, the Cottonwood Heights City Council adopted **ORDINANCE 325** AN ORDINANCE GRANTING A MASTER LICENSE AGREEMENT FOR WIRELESS FACILITIES IN THE PUBLIC WAY TO CROWN CASTLE FIBER LLC. A complete copy of the ordinance can be found at www.ch.utah.gov.

1257155 UPAXLP

AFFIDAVIT OF PUBLICATION

AS NEWSPAPER AGENCY COMPANY, LLC dba UTAH MEDIA GROUP LEGAL BOOKER, I CERTIFY THAT THE ATTACHED ADVERTISEMENT OF **COTTONWOOD HEIGHTS PUBLIC NOTICE Notice is hereby given that during a City Council meeting of June 4, 2019, the Cottonwood Heights City Council adopted ORDINA** FOR **COTTONWOOD HEIGHTS,** WAS PUBLISHED BY THE NEWSPAPER AGENCY COMPANY, LLC dba UTAH MEDIA GROUP, AGENT FOR DESERET NEWS AND THE SALT LAKE TRIBUNE, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH. NOTICE IS ALSO POSTED ON UTAHLEGALS.COM ON THE SAME DAY AS THE FIRST NEWSPAPER PUBLICATION DATE AND REMAINS ON UTAHLEGALS.COM INDEFINITELY. COMPLIES WITH UTAH DIGITAL SIGNATURE ACT UTAH CODE 46-2-101; 46-3-104.

PUBLISHED ON Start 06/09/2019 End 06/09/2019

DATE 6/10/2019 SIGNATURE Lgudmundson

STATE OF UTAH)

COUNTY OF SALT LAKE)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 9TH DAY OF JUNE IN THE YEAR 2019

BY LORAINE GUDMUNDSON.

JAE LEVI
NOTARY PUBLIC -STATE OF UTAH
My Comm. Exp 05/29/2022
Commission # 700608

Jae Levi
NOTARY PUBLIC SIGNATURE