



## CMRS FACILITY CHECKLIST

**An application for a CMRS facility shall be accompanied by the following information, unless one or more items are specifically waived in writing by the Planning Director:**

- The Development Review Application form.
- The applicable CMRS Facility fee.
- A project statement identifying the proposed CMRS facility and telecommunication service to be provided.
- An indication as to whether the facility is designed to accommodate the equipment of additional carriers. Each application for a CMRS facility shall be accompanied by a statement from the building/property owner indicating that they consent to the placement of the CMRS facility on the site and information which indicates that the lease does not preclude collocation.

An application for a modification to an existing facility which is not a “substantial change” and is considered an “eligible facilities request,” as defined in Section 18.07.110 of this title, shall provide all information reasonably required by the Town to determine whether the request meets the requirements for being an “eligible facility request” that is not a “substantial change” in the physical dimensions of the support structure.

An application for any other building or roof mounted facility, or to place additional antennas on existing freestanding facilities, shall make application as a site plan. Refer to the Site Plan Checklist.

An application for a freestanding CMRS facility shall be accompanied by the following information:

- An application for a Conditional Use. Refer to the Conditional Use Checklist.
- Evidence that the carrier has reasonably explored the use of wall or roof or stealth facilities within the search area and determined that said facilities are not feasible or appropriate and justification of the need for the proposed tower and height requested.
- A site development plan illustrating all existing buildings, parking, easements, and landscaping existing on the site as well as any proposed CMRS facility locations, landscaping, screening or security fencing.
- A photo simulation, illustrating "before" and "after" what the site will look like once the freestanding CMRS facility and any ground-mounted equipment have been constructed. The photos shall be taken from an adjoining public street and from any adjacent residential zoning from which the freestanding facility will be visible.
- Elevation drawings shall include the freestanding CMRS facility, as well as any ground-mounted equipment. The drawings should indicate the appearance, height, color and material proposed for the freestanding CMRS facility, antennas and associated equipment.
- A license agreement for any small cell facilities proposed in the public right-of-way (attach Wireless Communications Facilities License Agreement). Refer to Appendix Three for model agreement.
- Any other special reports and/or information deemed necessary by Town Staff at the pre-application meeting.
- Copies of the submittal materials in a format and quantity as specified by Town Staff.

**SMALL CELL  
WIRELESS COMMUNICATIONS FACILITIES  
MASTER LICENSE AGREEMENT**

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between the Town of Monument, Colorado ("Licensor") and \_\_\_\_\_ with its principal office located at \_\_\_\_\_ ("Company").

**RECITALS**

A. The Company owns and/or controls, maintains, and operates a wireless and fiber communications Network (as defined in Section 1.7 below) that serves its customers.

B. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Wireless Communications Facilities, including Small Cell Facilities in the Public Rights-of-Way ("PROW") (as defined in Section 1.10 below).

C. The Licensor is the owner of PROW, streets, utility easements and similar property rights, as well as certain municipal facilities located in the public rights-of-way situated within the Town limits of Monument, Colorado.

D. The Company agrees to comply with Licensor's ordinances, regulations, and other adopted provisions concerning PROW and Wireless Communication Facilities.

**SECTION 1. DEFINITIONS**

For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary.

1.1 *Affiliate* means any entity that, directly or indirectly controls, is controlled by, or is under common control with, the Company. Affiliate includes (i) any entity in which the Company holds a controlling or similar interest; (ii) any entity which holds a controlling equity or similar interest in the Company; (iii) any entity under common control with the Company.

1.2 *Applicable Laws* means any statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the Licensor or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.

1.3 *Emergency* means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems; damaged, obstructed or leaking sewer or storm drain

conduit systems; or damaged electrical or communications facilities.

1.4 *Equipment* means Small Cell antennas and other Wireless Communications Facility equipment utilizing small cell technology that is specifically identified, described, and approved by the Licensor as set forth in Attachment 1, Table 2 attached to each Supplemental Site Permit (as defined below) and includes, but is not limited to, nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes, and a pole, and associated and appurtenant equipment on the pole or on the ground deemed by Company necessary to operate the WCF and uses intended thereto.

1.5 *FCC* means the Federal Communications Commission.

1.6 *Interference* means physical interference where equipment, vegetation, or a structure causes reduced use of another's prior mounted equipment, or an obstruction in a necessary line-of-sight path, and/or radio frequency interference where the emission or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with the operation of adjacent or nearby equipment.

1.7 *Network* or collectively *Networks* means one or more of the wireless and fiber-based communications facilities operated by the Company to serve its wireless carrier customers in the Town of Monument.

1.8 *Owner* means a person with a legal or equitable interest in ownership of real or personal property.

1.9 *Public Property* means any real property owned by the Licensor other than Public Rights-of-Way.

1.10 *Public Rights-of-Way* or *PROW* means the surface, air space above the surface, and the area below any public street, road, highway, freeway, lane, public way, alley, court, sidewalk, boulevard, drive, bridge, tunnel, parkway, or easement now or hereafter held by the Licensor, or dedicated for use by the Licensor, use by the general public, or use compatible with the service or operations of the Wireless Communications Facilities.

1.11 *Small Cell Facility* means a wireless service facility that meets both of the following qualifications:

- (i) Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
- (ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off

switch.

1.12 *Supplemental Site Permit* means a document, substantially in the form attached as Exhibit A. Each Wireless Site installation will be subject to a Supplemental Site Permit.

1.13 *Wireless Communications Facility* or *WCF* means a facility used to provide personal wireless services [as defined at 47 U.S.C. Section 332 (c)(7)(C)]; or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directions, omnidirections and parabolic antennas, base stations, support equipment, alternative tower structures, and towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this section.

1.14 *Wireless Site* means a location on Public Rights-of-Way selected for the Company's deployment of Wireless Communications Facilities, including Small Cell Facilities.

To the extent this Agreement refers to terms that are defined in any other applicable provisions of the Monument Municipal Code, as amended, those definitions shall apply.

## SECTION 2. GRANT OF AUTHORITY

2.1 Grant of License. The Licensor hereby grants to the Company, a non-exclusive license to use and occupy the PROW throughout the territorial boundaries of the Licensor, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Wireless Communications Facilities identified in each Supplemental Site Permit. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Applicable Laws. The Company shall install its WCFs consistent with the Licensor's applicable ordinances and regulations, including but not limited to any and all Monument Municipal Code provisions requiring permit approval for work in the PROW. The parties understand and agree that this Agreement is a limited grant of authority subject in all respects to Applicable Law, including without limitation, those regarding the kind, size, height and bulk of structures in the PROW, and further subject to all provisions contained herein, including without limitation, Exhibit B, Operational and Design Criteria.

### 2.2 Installations on Poles.

2.2.1 WCFs owned and/or controlled by the Company may be installed only on the following, and in the listed priority: (i) Town-owned utility pole (removed and replaced with

new pole concealing all equipment and conveyed back to Town) (ii) Town-owned utility pole (attached to existing pole), (iii) metal third party poles such as street light or electric distribution poles with written consent of the owner thereof and in a configuration approved by Licensor (where metal poles do not exist, Licensor will consider installations on wooden poles), (iv) Licensor's traffic signal poles or mast arms, or if owned by CDOT then approved by CDOT, or (v) freestanding or ground-mounted pole that meets the definition and requirements for an alternative tower structure in attached Exhibit B. The Company shall be responsible for complying with all obligations under this Agreement regarding its Equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all WCFs shall be installed on poles located at Wireless Sites. For attachments of Wireless Communications Facilities in the PROW on structures owned by the Licensor, in addition to all obligations of this Agreement, the Company shall be bound by the requirements contained in Exhibit B, and all applicable Licensor rules and regulations, which may be modified by Licensor from time to time. Licensor may suggest a change in these site priorities based upon any factors relevant to a specific site request.

2.2.2 Locations will be prioritized based upon Company's technical and radio frequency needs and construction costs, but in any situation where Company has a choice of Equipment locations, the Parties shall mutually exercise good faith efforts to agree on attachments to poles in the order indicated above, provided that (i) such poles are at least equally suitable functionally for the operation of Company's network and (ii) the construction and installation burdens associated with such attachment over the length of the Term are equal to or less than Company's burdens to attach to a pole in the category(ies) below it.

2.3 License Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire fifteen (15) years from the Effective Date (the "Term"), unless renewed as herein provided in Section 7.2. The term of each Supplemental Site Permit shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site Permit shall be five (5) years. If the Term of this Agreement expires before the end of any five (5) year Supplemental Site Permit term, this Agreement shall remain in effect only with respect to any Supplemental Site Permit through the end of such Supplemental Site Permit's term.

2.4 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided, the applicable attachments to this Agreement, and all Applicable Laws. In the event of any conflict between this Agreement, including the Exhibits, and the Monument Municipal Code as it exists on the effective date of this Agreement, the Monument Municipal Code prevails, except as federal or state law may preempt or act to modify the Monument Municipal Code at present or in the future. Future amendments to the Monument Municipal Code shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, except as federal or state law may preempt or act to modify the Monument Municipal Code.

2.5 Non-Exclusive License. The Company's right to use and occupy the PROW and attach to structures therein shall not be exclusive. The Licensor reserves the right to grant a similar use to itself or any Person at any time, subject to Section 3.10.4 below.

2.6 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights it may assert against the Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause, except as provided in Section 5 and except with respect to claims, demands, causes of action, and rights the Company may assert against the Licensor and its officials, personnel, agents, and representatives in connection with their negligence and willful misconduct.

2.7 No Interest in Public Property or PROW. Nothing under this Agreement shall be interpreted to create or vest in the Company any easement or other ownership or property interest to any Public Property or PROW or constitute an assignment of any Licensor's rights to Public Property or PROW. The Company shall, at all times, be and remain a licensee only.

2.8 No Illegal Activity Permitted. The Company shall not use or permit the Wireless Sites or Licensor-owned infrastructure to be used for any activity violating any Applicable Laws.

2.9 Sub-Tenants and Sub-Licensees of Company (IF APPLICABLE). The parties understand and agree that the Company may provide access to the Wireless Sites to its customers through leases, licenses or similar agreements. The Company shall require in its agreements with its customers that its customers agree to be subject to all terms, conditions and obligations of this Agreement as they may relate to the customers' use of the Wireless Sites and that the customers shall further comply with all Applicable Laws. The parties acknowledge and agree that Company's provision of service may include "turnkey service" whereby Company installs equipment to which its customer owns legal title. As part of "turnkey service," Company (including its contractors and agents) will be the responsible party for all of the operation, repair and maintenance of such equipment under this Agreement. If a Company customer desires to operate, repair and maintain such equipment, it is understood that such customer must first obtain a Master License Agreement from the Licensor.

### **SECTION 3. PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY**

3.1 License Requirement/Processing Fees. Each Wireless Site will be subject to a Supplemental Site Permit pursuant to the terms and conditions of this Agreement. The Company may terminate any Supplemental Site Permit for convenience at its discretion, subject to all obligations for removal of Wireless Communications Facilities, restoration of the Wireless Site and any other applicable conditions of law related to such termination. The Company shall also submit processing fees to the Licensor for each Supplemental Site Permit, which fees are non-refundable, and are comparable to Licensor's fees for similar permits in order to allow the Licensor to recover its costs of the permitting process and may be modified in the future to be consistent with fees then imposed on like activities. The Company shall also submit such other information as may be reasonably requested by the Licensor.

3.2 Permitted Use of PROW. Subject to Section 2.4, PROW may be used by the

Company, seven (7) days a week, twenty-four (24) hours a day, only for the Wireless Sites and attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of WCFs and not for any other purpose. It is understood that the purpose for installing its Equipment at designated Wireless Sites in the PROW is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures and fiber backhaul. This Agreement shall include new types of small cell Equipment that may evolve or be adopted using wireless technologies.

### 3.3 Application and Approval of Wireless Sites.

3.3.1 The Company shall file with the Licensor Supplemental Site Permits for proposed Wireless Sites for which the Company is seeking administrative approval. The Company may seek approval for up to ten (10) WCFs under this Agreement at a given time. Each Wireless Site shall be processed as a separate Supplemental Site Permit. Each Supplemental Site Permit request must include information on (i) the Owner of the pole upon which the WCF is proposed to be installed; (ii) where poles are owned by a third party, a letter of authorization from the Owner of the poles confirming that Company has authority to make the requested attachment(s); and (iii) such other information as set forth on Exhibit A, which may, in the Licensor's sole discretion, be modified from time to time to meet the needs of the Licensor. If the WCF is proposed in rights-of-way owned by another governmental entity, a copy of the agreement authorizing the Company access to that right-of-way is also required. Upon filing of a complete request for a Supplemental Site Permit, the Licensor shall process the request within thirty (30) days, or within such other time as designated by Applicable Law, and shall render a final decision within ninety (90) days of a complete request. Notwithstanding the foregoing, if the Supplemental Site Permit request seeks permission to install or construct any WCFs that are not subject to administrative approval, the time in which the Licensor shall direct the Company to apply for the necessary land use permission shall be that period permitted under Applicable Law.

3.3.2 For installations, construction, operation, maintenance, and removal of WCFs, the Company shall obtain all generally applicable permits that are required of all occupants of the PROW in accordance with Applicable Law. The Licensor shall process all permit applications in a non-discriminatory and competitively neutral manner.

3.3.3 Upon finding that a request for a Supplemental Site Permit is complete, the Licensor will verify whether the location (and any existing pole) identified by the Company as a Wireless Site is within the PROW. If it is not, then, except as set forth in Section 3.3.1, the request would be outside the scope of this Agreement.

3.3.4 Modification. Notwithstanding anything in this Agreement to the contrary, modifications shall be subject to permitting required under Applicable Laws, but shall not be subject to additional Licensor approval, to the extent that: (i) such modification to WCFs involve only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the WCF, change in loading impacts on the pole as approved by the Licensor or impact to multi-modal traffic flow; or (ii) such modification involves replacement of the WCF with a WCF that is of similar design, and the same or smaller in weight and dimensions as the approved WCF and does not impact multi-modal traffic flow.

3.4 Utilities. The Company will be responsible for telephone, electric and any other utility service used or consumed by the Company in connection with its WCFs. In no event will the Company secure its utilities by sub-metering from the Licensor.

3.5 Duty to Minimize Interference. The Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the PROW, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, Licensor-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and Licensor networks, and other telecommunications, utility, or Public Property. All Company activities in the PROW shall be carried on as to minimize interference with the use of the PROW and with the use of private property, in accordance with all regulations of the Licensor necessary to provide for and protect public health, safety and convenience.

3.6 Relocations.

3.6.1. The Licensor shall have the right to require the Company and its customers to relocate, remove, replace, modify or disconnect WCFs located in the PROW for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, PROW vacation, PROW construction, change or establishment of PROW grade, installation of sewers, drains, electric lines, gas or water pipes, conduits, cables, or any other types of structures or improvements approved by the Licensor for public purposes). Such work shall be performed at the Company's expense. The Licensor also reserves the right to make full use of the property involved as may be necessary or convenient, and the Licensor retains all rights to operate, maintain, install, repair, remove, replace or relocate any of its facilities located within the Licensor's property at any time and in such a manner as it deems necessary or convenient. Except during an emergency or for public safety purposes, the Licensor shall provide reasonable notice to the Company, of not less than sixty (60) days, and allow the Company the opportunity to perform any relocation, removal, replacement modification or disconnection of the WCFs located in the PROW. Within sixty (60) days written notice from the Licensor, the Company shall relocate, remove, replace, modify or disconnect any of its WCFs within any PROW. If the Licensor requires the Company to relocate its WCFs located within the PROW, the Licensor shall make a reasonable effort to provide the Company with an alternate location within the PROW. During such relocation, if necessary, in the Company's reasonable determination, and consistent with any applicable permit requirements, it may place a temporary installation in the PROW (e.g. cell-on-wheels).

3.6.2. If the Company fails to complete the relocation within the sixty (60) day period and to the Licensor's satisfaction, the Licensor may remove the WCFs or otherwise cause such work to be done and bill the cost of the work to the Company, including all costs and expenses incurred by the Licensor due to the Company's delay. In such event, the Licensor shall not be liable for any damage to any portion of the Network other than damage caused by the Licensor's negligence or willful misconduct. The Company shall make full payment to the Licensor within thirty (30) days of receipt of an itemized list of such costs.

3.7 Duty to Repair. Any PROW, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement,



removal, relocation, operation or maintenance of any WCFs by the Company or its agents or contractors shall be promptly repaired to the reasonable satisfaction of the Licensor by the Company at its sole expense. The Company must provide written notification to the Licensor within 24 hours of the damage and report corrective activities after completion to the Licensor.

3.8 Inventory of Wireless Sites. The Company shall maintain a current inventory of Wireless Sites throughout the Term. Upon written request of the Licensor, which request may be made once and is not required to be made annually, the Company shall provide to the Licensor a copy of the inventory of Wireless Sites by December 31st of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, Wireless Site address (meter - as assigned by Licensor), date of installation, the Company Site ID #, type of pole used for installation, pole Owner, and description/type of installation for each Wireless Site WCF installation. Concerning Wireless Sites that become inactive, the inventory shall include the same information as active installations in addition to the date the Wireless Site was deactivated and the date the WCF was removed from the PROW. The Licensor will compare the inventory to its records to identify any discrepancies.

3.9 Unauthorized Installations. If there are any unauthorized Wireless Sites identified by the Licensor as a result of comparing the inventory of Wireless Sites to internal records or through any other means, the Licensor shall provide written notice to the Company of such unauthorized Wireless Site and the Company shall have thirty (30) days thereafter in which to submit an application request for a Supplemental Site Permit for that location, or alternatively to remove the WCFs and restore the property at the Company's expense. If the Company fails to submit a request for a Supplemental Site Permit, or if the request is denied, the Company shall remove the WCFs from the PROW and restore the property at its expense within thirty (30) days, unless a different time period is agreed to by the parties. If the request is approved, the Company must pay the required fees for a new WCF site plus interest at the rate of two percent (2%) per annum from the date of the original installation.

3.10 Signal Interference Prohibited.

3.10.1.1 Notice; Company Response. In the event any WCFs interfere with the Licensor's traffic signal system, public safety radio system, or other Licensor communications infrastructure operating on spectrum where the Licensor is legally authorized to operate, the Company will respond to the Licensor's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving such request, pursuant to protocol outlined in Section 3.10.2 below, and shall follow the escalation process outlined in Section 4 of this Agreement.

3.10.1.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the Director of Public Works an interference remediation report that includes the following items:

3.10.1.3 Remediation Plan. Devise a remediation plan to stop the event of interference;

3.10.1.4 Time Frame for Execution. Provide the expected time frame for execution of the remediation plan; and

3.10.1.5 Additional Information. Include any additional information relevant to the execution of the remediation plan.

3.10.2 Removal; Relocation. In the event interference with Licensor's facilities cannot be eliminated, the Company shall shut down the WCFs and pursuant to Section 3.6 remove or relocate any WCF that is the source of the interference to a suitable alternative location.

3.10.3 Interference with the Company's pre-existing Telecommunications Equipment. Notwithstanding the foregoing, Licensor will not, nor will the Licensor permit its employees, tenants, licensees, invitees, agents or independent contractors to cause interference with the Company's pre-existing Wireless Communications Facilities, the Company's use of the poles to which the Company's Wireless Communications Facilities are attached, or the Company's ability to comply with the terms and conditions of this Agreement. If the Company reasonably determines that such interference is occurring, then Licensor will meet and confer with the Company within five (5) days of Licensor's receipt of notice of interference from the Company, and otherwise diligently work in good faith with the Company to determine the root cause of the interference and to develop workable solutions to resolve the interference in a mutually acceptable manner.

#### **SECTION 4. EMERGENCY CONTACTS**

4.1 Coordination of Emergency Events. In case of an emergency due to interference, failure of traffic signal or utility systems, or any unforeseen events, the Licensor will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this Agreement. The Licensor will make every reasonable effort to coordinate its emergency response with the Company. To that end, the Licensor will use the following emergency contacts:

4.1.1 Level One Contact: The Company's network operations center may be reached at (800) 832-6662.

4.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the Director of Public Works or his/her designee.

4.3 Company's Response to Network Emergency. In case of a Network emergency due to any unforeseen event, the Company may access its Wireless Sites and WCFs without first obtaining a PROW permit provided the Company has conducted Network trouble-shooting and diagnostic tests and has reasonably identified the point or points of Network failure or malfunction. While acting under this provision to address a Network emergency, the Company shall conduct its activities within the PROW in such a manner as to protect public and private property and to provide the necessary traffic control. The Company shall make every reasonable effort to coordinate its emergency response with the Licensor. To that end, prior to entering the PROW, the Company shall use the following emergency contacts to give notice to the Licensor of the Network emergency and an estimated time period to address the situation:

4.3.1 The Licensor's public safety communications dispatch may be reached 24/7 at:

Jeffcom Dispatch, 303-980-7300. Contact should also be made to the afterhours Utility Emergency Call line, 720-898-7820.

4.3.2 If contact cannot be made with the Licensor in this manner, the Company shall call 911.

4.3.3 Notwithstanding the foregoing, within three (3) days after undertaking the emergency work, the Company is required to submit a complete application for a right of way permit in order to allow the Licensor to update its records of the work. Permit applications should be emailed to [enter Town e-mail address]. The nature of the emergency work shall be noted on the permit application.

4.4 Licensor's Duty to Maintain Emergency Contacts. The Licensor shall maintain the emergency contact information current at all times with Company's network operations contact.

## **SECTION 5. INDEMNITY AND INSURANCE**

### **5.1 Indemnity.**

5.1.1 The Company shall indemnify, defend and hold the Licensor, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the WCFs, any of its or its customers' activities on any Wireless Site, or the Company's breach of any provision of this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or willful misconduct of the Licensor or an Indemnified Party.

5.1.2 The Indemnified Party shall give the Company timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding in connection with any WCFs. In the event such claim arises, the Indemnified Party shall tender the defense thereof to the Company and the Company shall consult and cooperate with the Licensor Attorney's Office while conducting its defense. The Licensor and the Indemnified Party shall cooperate fully therein with Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.

5.1.3 If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by Company to represent the Indemnified Party, the Company shall pay for all reasonable expenses incurred by the Indemnified Party as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the Indemnified Party shall select its own counsel and any other experts or consultants, subject to the Company's prior approval. The Indemnified Party's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Indemnified Party's attorney (including outside attorneys who may serve in the capacity of Licensor's Town Attorney or who may serve as defense counsel or special counsel on telecommunications matters, provided that such outside attorneys' fees are not unnecessarily duplicative of services provided to the Indemnified Party by the Company) or their assistants or any employees of the Indemnified Party or its agents.

5.1.4 Neither party will be liable under this Agreement for consequential, indirect, special, or incidental or punitive damages for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

## 5.2 Insurance.

5.2.1 The Company shall carry during the Term, at its own cost and expense, the following insurance: (i) commercial general liability insurance on an occurrence basis with a limit of liability of \$2,000,000 per occurrence and \$4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the primary commercial general liability insurance, which has coverage as broad as such primary policy and which coverage has no separate or additional deductible or self-insurance retention, with a limit of \$2,000,000. The Company may use any combination of primary and excess insurance to meet the total limits required; (iii) Workers' Compensation Insurance as required by law; and (iv) employers' liability insurance with limits of \$500,000 bodily injury each accident, \$500,000 bodily injury each disease, and \$500,000 bodily injury disease aggregate. Notwithstanding the foregoing, the Licensor may increase the aforementioned minimum limits of insurance at any time in its sole discretion, but no more than once during any five (5) year period and with sixty (60) days' notice to the Company. The Company shall require each of its contractors to adhere to these same requirements or shall insure the activities of the contractors in the Company's insurance policies.

5.2.2 All of the insurance coverages identified in Section 5.2.1, except the workers' compensation and employer's liability insurance, shall apply to and include the Licensor as an additional insured as respects this Agreement, and shall provide a defense and indemnification to the Licensor regardless of the Licensor's fault or wrongdoing unless Licensor is solely liable or grossly negligent. Licensor's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by the Company, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages where such coverage is prohibited by law. The insurance shall indemnify and defend the Licensor against all loss, damage, expense and liability caused, in whole or in part, by the acts of the Company under this Agreement. To the extent allowed by law, each of such insurance coverages shall contain a waiver of subrogation for the Licensor's benefit. Further, the insurance coverages identified in Section 5.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the Licensor.

5.2.3 Upon execution of this Agreement and upon any subsequent request of the Licensor, the Company shall provide the Licensor with a Certificate of Insurance and relevant required endorsements to provide evidence of the coverage required by this Section 5.2.

5.2.4 The Company shall provide thirty (30) days advance notice to the Licensor in the event of cancellation or nonrenewal of any required coverage or modification of any required coverage that is not replaced such that it is no longer compliant with this Section 5.2.

5.2.5 All of the primary insurance policies Company, and its contractors to the extent

applicable under Section 5.2.1, are required to maintain in this Section 5.2 shall be obtained from insurance carriers having an A.M. Best rating of at least A-X, and each excess insurance policy shall be obtained from an insurance carrier having an A.M. Best rating of at least A-VII.

## SECTION 6. DEFAULT AND REMEDIES

6.1 Notice of Violation to Company. The Licensor shall provide the Company with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which the Company may: (i) demonstrate that a violation does not exist, (ii) cure the alleged violation, or (iii) if the nature of the alleged violation prevents correction thereof within thirty (30) days, to initiate a reasonable plan of action to correct such violation (including a projected date by which it will be completed) and notify the Licensor of such plan of action.

6.2 Company Default. If the Company fails to disprove or correct the violation within thirty (30) days, or, in the case of a violation which cannot be corrected in thirty (30) days, the Company has failed to initiate a reasonable plan of corrective action and to correct the violation within the specified time frame in such plan, then the Licensor may declare in writing that the Company is in default.

6.3 Notice of Violation to Licensor. The Company shall provide Licensor with a detailed written notice of any violation of this Agreement, and a thirty (30) day period within which Licensor may: (a) demonstrate that a violation does not exist, (b) cure the alleged violation, or (c) if the nature of the alleged violation prevents correction thereof within 30 days, to initiate a reasonable corrective action plan to correct such alleged violation, including a projected completion date; provided, however, that such plan shall be subject to Company's written approval where Company's Equipment or operations will be affected by the corrective action, which approval will not be unreasonably withheld.

6.4 Licensor Default. If Licensor fails to disprove or correct the violation within thirty (30) days or, in the case of a violation which cannot be corrected in 30 days if Licensor has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Company may declare in writing that Licensor is in default.

6.5 Bankruptcy. The parties expressly agree and acknowledge that it is their intent that in the event the Company shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, *et seq.* (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any Person to which the Company's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Company arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Licensor an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Licensor, shall be the exclusive property of the Licensor, and shall not constitute property of the Company or of the estate of the Company within the meaning of the Code. Any monies or other

considerations constituting the Licensor's property under the preceding sentence not paid or delivered to the Licensor shall be held in trust for the benefit of the Licensor and be promptly paid to the Licensor.

6.6 Hearing Available to Company. Within fifteen (15) days after receipt of a written declaration of default from the Licensor, the Company may make a written request for a hearing before the Monument Town Board of Trustees or its designee, in a public proceeding affording due process. If a hearing is not requested, the Licensor may seek any remedy available under Applicable Law. If a hearing is requested, such hearing shall be held within sixty (60) days of the receipt of the request therefor and a decision rendered within fifteen (15) days after the conclusion of the hearing. Upon a finding of default, the Monument Town Board of Trustees or its designee may impose remedies of revocation of the specific Supplemental Site Permit to which the default pertains and/or recovery of actual damages caused by such breach. Any decision shall be in writing and shall be based upon written findings of fact as contained in the record of the hearing.

6.7 Appeal of Default. The Company may appeal a finding of default and/or imposition of remedies by the Town Board of Trustees or its designee, which appeal shall be pursuant to C.R.C.P. 106 and based upon the written record. Alternatively, the parties may, by mutual agreement, agree to address the finding of default through arbitration or mediation.

6.8 Termination/Revocation. Notwithstanding the provisions of Sections 6.6 and 6.7, in the event of a default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement if the default affects all Supplemental Site Permits and the Agreement as a whole, or any Supplemental Site Permit subject to the default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Applicable Law. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

## **SECTION 7. AMENDMENT AND RENEWAL**

7.1 Amendment. Written requests to amend this Agreement for any purposes may be made by either party. The parties shall engage in good faith discussions and endeavor to reach agreement within sixty (60) days of receipt of such written request. Any amendment shall become effective after being duly executed by both parties. Notwithstanding the foregoing, nothing shall require either party to agree to any amendment request.

7.2 Renewal.

7.2.1 Unless earlier terminated by either party pursuant to the provisions of this Agreement, the Company may request a renewal of this Agreement, by providing six (6) months written notice of its intent to renew prior to the expiration date of the Agreement. After providing such notice, this Agreement shall renew on the same terms and conditions as herein for one (1) successive term of five (5) years, provided that the Company has complied with the material terms of this Agreement. If the Licensor does not believe that the Company is entitled to renewal as requested, the Licensor shall provide written notification to the Company at least ninety (90) days

prior to the expiration date of this Agreement, in which notice the Licensor shall provide support for its position.

7.2.2 As between the Licensor and the Company, the Company shall at all times retain ownership of the WCFs, unless an alternative vertical structure, such as a street light, has been purchased by the Company and ownership assigned to the Licensor, pursuant to this Agreement. Upon expiration or non-renewal of this Agreement, within forty-five (45) days of the expiration of the then-current Term, the Company shall be permitted to remove its WCFs installed within the PROW, or alternatively, sell the same to a qualified buyer consistent with Applicable Law. In no event may Company abandon in place any of its WCFs installed in or on the PROW, unless written consent of the Licensor is obtained.

## **SECTION 8. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL**

8.1 Definitions. In this Section, the following words have the meanings indicated:

8.1.1 *Control*" means actual working control in whatever manner exercised. Control includes, but may not necessarily require, majority stock ownership or control of 51% or more of the voting rights in the Company.

8.1.2 *Proposed Transferee* means a proposed purchaser, transferee, lessee, assignee or Person acquiring ownership or control of this Agreement or of the Company.

8.2 No Transfer. Subject to Section 2.9, the Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, any Supplemental Site Permit as provided for herein, or any of the rights or privileges therein granted, without the prior consent of the Licensor, except that such consent shall not be required for a transfer or assignment to an Affiliate. In the event that the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the Licensor's poles are located occurs, Licensor's consent shall not be unreasonably withheld. The consent required by the Licensor may be conditioned upon the performance of those requirements necessary to ensure compliance with the obligations of this Agreement. The Company shall provide no less than thirty (30) days written notice to the Licensor of the details of any transaction described herein that requires Licensor consent. Once the Company obtains Licensor consent to transfer or assign this Agreement to a third party as required under this Section, the Company shall be authorized to transfer each Supplemental Site Permit to such third party without further consent or approval. Notwithstanding anything to the contrary in this Section, no Licensor consent is required for transfers to non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor. The Company shall provide no less than thirty (30) days written notice to the Licensor of a transaction covered in this Section to a non-Affiliate that it believes is compliant with its obligations to the Licensor.

8.3 Company Control. The requirements of Section 8.2 shall also apply to any change in Control of the Company. A rebuttable presumption that a transfer of Control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of the Company. The consent required

(other than with respect to Affiliates and non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor) may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon the Company by the Licensor. For the purpose of determining whether it should consent to transfer of Control, the Licensor may inquire into the qualifications of the proposed transferee and the Company shall assist the Licensor in the inquiry.

8.4 Required Information. In seeking the Licensor's consent to any change in ownership or control for which prior consent is required under Sections 8.2 and 8.3, the Company shall require the Proposed Transferee to indicate whether it:

8.4.1 Has ever been convicted or held liable for acts involving deceit including any violation of Applicable Laws, or is currently under an indictment, investigation or complaint charging such acts;

8.4.2 Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

8.4.3 Has pending any material legal claim, law suit, or administrative proceeding arising out of or involving a Network and/or Equipment similar to that contemplated by this Agreement, except that any such claims, suits or proceedings relating to insurance claims, theft of service, or employment matters need not be disclosed;

8.4.4 Is financially solvent, by submitting financial data including financial statements that are audited or reviewed by a certified public accountant who may also be an officer of the parent corporation along with any other data that the Licensor may reasonably require; and

8.4.5 Has the financial and technical capability to enable it to maintain and operate the Network and Wireless Sites and WCFs for the remainder of the Term.

8.5 Company's Compliance with Terms. In seeking the Licensor's consent to any change in ownership or control, the Company shall indicate whether it has failed to comply with any material provision of this Agreement at any point during the term of this Agreement.

8.6 No Waiver. The consent or approval of the Licensor to transfer by the Company does not constitute a waiver or release of the rights of the Licensor in or to its PROW, and any transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement.

8.7 Agreement Binding. Any sale, transfer or assignment of this Agreement will bind the successor in interest to the terms of this Agreement.

8.8 Pledge of Assets. Notwithstanding anything contained in this Agreement, the Company may pledge the assets of the Network and WCFs for the purpose of financing provided that such pledge of assets shall not impair the Company or mitigate the Company's responsibility and capability to meet all its obligations under the provisions of this Agreement.



8.9 [IF APPLICABLE] The Licensor and the Company agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain WCFs deployed by Company in the PROW pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("Carriers") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such WCFs shall be treated as Company's WCFs for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such WCFs; (ii) Licensor's sole point of contact regarding such WCFs shall be the Company; and (iii) Company shall have the right to remove and relocate the WCFs. Such WCFs are subject to Applicable Law, and the Company shall indemnify the Licensor and hold it harmless from any claims from Carriers related to any action taken by the Licensor with respect to the facilities in accordance with Applicable Law. Should the Company's agreement(s) with any Carriers related to any WCFs cease, the Company shall provide the Licensor with notice of such termination and contact information for the owners of the WCFs at least ten (10) business days prior to such termination.

## SECTION 9. MISCELLANEOUS

9.1 Severability. If any Applicable Law or legal opinion of a court of competent jurisdiction renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect unless the original intent of the parties cannot be achieved as a result. In that event, the parties shall engage in good faith discussions and endeavor to reach agreement to appropriate amendments to this Agreement that achieve the original intent of the parties. If the parties are unable to so jointly amend this agreement within ninety (90) days, this Agreement is null and void and of no further effect.

9.2 Force Majeure. The Company shall not be deemed to be in default, non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond the Company's control, provided the Company took steps to mitigate damages and accepts responsibility to cure the default, non-compliance or violation in a manner and within a time period reasonably acceptable to the Licensor.

9.3 No Waiver.

9.3.1 The failure of either party on one or more occasions to exercise a right or to require compliance or performance under this Agreement shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by such party, unless such right or such compliance or performance has been specifically waived in writing.

9.3.2 Both the Licensor and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the Licensor nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

9.4 Attorney Fees. Should any dispute arising out of this Agreement lead to arbitration or litigation, the prevailing party shall be entitled to recover its costs of suit,

including (without limitation) reasonable attorneys' fees.

9.5 Change of Law. Except as provided in 9.1 above, if any Applicable Law that governs any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change preempts compliance with or the enforcement of any aspect of such rights or obligations, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

9.6 Notice. All notices that shall or may be given pursuant to this Agreement must be in writing and delivered by hand or (i) through the United States mail, by registered or certified mail; or (ii) by prepaid overnight delivery service. If a hard copy of the same is delivered through the U. S. Postal Service or by overnight delivery service, it shall be delivered to the following addresses:

If to Licensor:                      Town Manager  
    Town of Monument  
    645 Beacon Lite Road  
    Monument, CO 80132

With a copy to:                      Town Attorney  
    Town of Monument  
    645 Beacon Lite Road  
    Monument, CO 80132

If to Company:                      \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

With a copy to:                      \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

Each party shall provide timely notice to the other of changes in the address for notification under this provision. Notice shall be deemed effective upon receipt in the case of hand delivery, three days after delivery to the U.S. Postal Service, or the next business day if delivery is effectuated by overnight delivery service.

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

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

9.9 Other PROW Users. The parties understand and agree that the Licensor permits other persons and entities to install utility facilities in the PROW. In permitting such work to be done by others, the Licensor shall not be liable to Company for any damage caused by those persons or entities.

9.10 Entire Agreement. This Agreement and all attachments hereto (including subsequently-approved Supplemental Site Permits) represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to this Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought.

9.11 Laws Governing/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. Venue for any proceeding brought pursuant to this Agreement shall be in the District Court located in El Paso County, Colorado.

9.12 No Third-Party Beneficiaries. This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.

9.13 Counterparts; Electronic Disposition. This Agreement may be executed in multiple counterparts, each of which constitutes an original hereof. Regardless of the number of counterparts, all shall constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

9.14 Public Disclosure. The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, C.R.S. § 24-72-202(6), and accordingly may be disclosed to the public.

9.15 Consents. To the extent either party is required hereunder to obtain the consent or approval of the other under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

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

**TOWN OF MONUMENT, COLORADO**

By: \_\_\_\_\_,  
Print name: \_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\_\_\_\_\_, Town Attorney

**COMPANY**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

## EXHIBIT A

### SUPPLEMENTAL SITE PERMIT

This Supplemental Site Permit, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") between the \_\_\_\_\_ of \_\_\_\_\_, hereinafter designated "Licensor," and \_\_\_\_\_, hereinafter designated "Company":

1. Supplemental Site Permit. This is a Supplemental Site Permit as referenced in that certain Wireless Communications Facilities Master License Agreement in connection with the operation of Company's Network, between Licensor and Company dated \_\_\_\_\_, 20\_\_ (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplemental Site Permit, the terms of this Supplemental Site Permit shall govern. Capitalized terms used in this Supplemental Site Permit shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. As described herein, Company shall have the right to use the Licensor-owned structure, other vertical structure owned by a third party or a newly constructed vertical structure for WCF at the Wireless Site in the PROW as described in Attachment 1, Table 1 attached hereto.

3. WCF Equipment. The Equipment to be installed at the Wireless Site is described in Attachment 1, Table 2 attached hereto.

4. Term. The term of this Supplemental Site Permit shall be as set forth in Section 2.3 of the Agreement.

5. Fees. If this Supplemental Site Permit is for attaching WCFs to Licensor-owned structures in the PROW, the initial annual attachment fee shall be \$200.00 ("Attachment Fee"). Such annual Attachment Fee shall not be applicable to street lighting poles approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor pursuant to Section 2.2.1(ii) of the Agreement.

6. Commencement Date. The commencement date of this Supplemental Site Permit is the first day of the month following the date Company has commenced installation of its WCFs at the Wireless Site.

7. Approvals. It is understood and agreed the Company's ability to use the Wireless Site is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Company determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Company determines one or more licensed Wireless Sites is no longer technically compatible for its use, Company shall have the right to terminate all or part of this Supplemental Site Permit. Notice of Company's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice

by Company, or upon such later date as designated by Company. All fees paid to said termination date shall be retained by Licensor. If the Company has not commenced installation of its WCFs at the Wireless Site within one hundred eighty (180) days of the Effective Date, this Supplemental Site Permit shall terminate without further action required by either party; provided however that such deadline may be extended by mutual written agreement of the parties; and further provided, however, that such 180-day period will be extended as reasonably necessary, but in no event beyond 365 days, if there are delays in obtaining necessary permits, licenses, rights-of-way, easements and other rights required to commence installation of the Company's WCFs due to circumstances beyond the Company's control. Upon such termination, all or part of this Supplemental Site Permit, as applicable shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the Agreement. Otherwise, Company shall have no further obligations for the payment of any Attachment Fee to Licensor.

**TOWN OF MONUMENT, COLORADO**

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Town Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\_\_\_\_\_, Town Attorney

**COMPANY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

**ATTACHMENT 1**

Table 1

WIRELESS SITE ID NO. AND ADDRESS	STREET NAME /INTERSECTION AND QUADRANT POLE IS LOCATED ON	STATE PLANE COORDINATES		EXISTING
		Easting (X)	Northing (Y)	EXISTING POLE TYPE

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Table 2

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WIRELESS SITE ID NO. AND ADDRESS	PROPOSED POLE ALTERATION	RESULTANT POLE HEIGHT	TYPE OF EQUIPMENT ATTACH
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## **SUPPLEMENTAL INSTRUCTIONS**

**COMPANY SHALL PROVIDE THE FOLLOWING, AS APPLICABLE, TO BE CONSIDERED BY LICENSOR IN WHETHER TO GRANT THE SUPPLEMENTAL SITE PERMIT:**

1. Plans showing engineering design, and specifications for installation of the Wireless Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, electrical conduit and cabling, location of any potholes and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance.
  - a. The plans shall show existing sidewalk size, existing utilities, existing trees and other existing improvements.
  - b. The plans shall include a separate sheet showing traffic control signs and equipment.
2. For Licensor poles, include documentation from the Licensor verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of the Wireless Communication Facility. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.
3. For new pole installations, include documentation verifying the pole location is in the PROW and is eligible for installation. Include list of adjacent property owners. If the proposed installation includes a new pole, provide design and specification drawings for the new pole.
4. If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
5. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
6. Description of the utility services required to support the facilities to be installed.
7. A typewritten legal description with (1) the Section, Township and Range, and County being affected, and if it is part of a subdivision, it shall be stated also; (2) the Point of Beginning to an established land corner or to a subdivision plat that is tied to an established land corner , with curves showing radius, delta, arc length and angle to radius point if curve is non- tangent, and area to be included in square feet; and (3) the legal description SIGNED and SEALED by a surveyor registered in the State of Colorado.
8. For Licensor-owned traffic signal poles, provide information required by Exhibit C of the Agreement.

**EXHIBIT B**  
**Operational and Design Criteria**

A. Operational Standards.

- (1) Federal Requirements. All Small Cell Facilities and other WCFs and associated Equipment (collectively, "WCFs") shall meet the current standards and regulations of the FAA, FCC and any other agency of the federal or state government with the authority to regulate telecommunication equipment. If such standards and regulations are changed, Company shall bring such WCFs into compliance with such revised standards and regulations within the time period mandated by the controlling federal or state agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCFs from any site under this Agreement at Company's expense.
- (2) Radio Frequency Standards. All WCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards are made to Licensor, Licensor may request that Company provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the WCFs may not be in compliance, Licensor may request and Company shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, Licensor finds the WCF does not meet federal standards, Licensor may require corrective action within a reasonable period of time, and if not corrected, may require removal of any WCFs as an unauthorized use under this Agreement. Any reasonable costs incurred by Licensor, including reasonable consulting costs to verify compliance with these requirements, shall be paid by Company upon demand by Licensor or, if such costs remain unpaid after demand, Licensor may recover such costs by the same manner and method authorized to recover nuisance abatement costs under the Monument Municipal Code.

B. Design Standards.

- (1) In addition to any requirements of the Monument Municipal Code, the requirements set forth in this Exhibit shall apply to the location and design of all WCFs governed by this Agreement as specified below; provided, however, Licensor may waive these requirements if it determines the goals of this Exhibit are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.
- (2) General Principals.
  - a. All WCFs covered by this Agreement shall be as architecturally compatible with the surrounding area as feasible;

- b. All electrical, communication, and other wiring to WCF components, including radios, antennae and backhaul connections, shall be fully concealed, internal to the structure where possible and shrouded in all other instances;
  - c. Height or size of the proposed WCFs and any replacement pole should be minimized and conform to the standard form factor of a Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable;
  - d. WCFs shall be sited in a manner that takes into consideration its proximity to residential structures and residential district boundaries, uses on adjacent and nearby properties, and the compatibility of the facility to these uses, including but not limited to proximity of Wireless Site to first and second story windows;
  - e. Equipment shall be designed to be compatible with the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable; and
  - f. WCFs and any associated landscaping fencing shall be designed and located outside of intersection sight triangle distances and in accordance with the Town of Monument Engineering Code of Standards and Specifications and AASHTO standards.
- (3) Camouflage/Concealment. All WCFs shall, to the extent possible, match the appearance and design of existing Licensor traffic signal or Licensor or utility company street light or distribution pole adjacent to the Wireless Site; and when not technically practicable, that WCF is to use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, landscaping, or other design options that will blend the WCF to the surrounding natural setting and as built environment. Design, materials and colors of WCFs not identical to existing Licensor traffic signal or Licensor or utility company street light or distribution poles shall otherwise be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on the same parcel and adjacent parcels.
- a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where a WCF is located in areas of high visibility, they shall (where possible) be designed to minimize their profile.
  - b. All WCF components including antennas, vaults, equipment rooms, equipment enclosures, and support structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
- (4) Hazardous Materials. No hazardous materials shall be permitted in association with

WCFs, except those necessary or requested for the operations of the WCFs and only in accordance with all Applicable Laws governing such materials.

- (5) Siting.
  - a. No portion of any WCF may extend beyond the ROW without prior approval(s).
  - b. Collocation and Modification. The parties acknowledge that it is the intent of the Agreement to provide general authorization to use the PROW for Small Cell Facilities as permitted under Applicable Laws. The designs approved by the Town for the installation of Small Cell Facilities as agreed to in the Supplemental Site Permit governing each specific site, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features under 47 CFR 1.40001 (as amended), and shall be addressed under Applicable Laws when considering collocation and modification requests.
  - c. WCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Licensor standards unless it is the only option.
- (6) Lighting. WCFs shall not be artificially lit, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, Licensor may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.
- (7) Landscape and Fencing Requirements.
  - a. Ground-mounted WCF components shall be sited in a manner that does not reduce the landscaped areas, for the other principal uses on the parcel, below Town standards.
  - b. Unless otherwise mutually agreed to by the parties, ground mounted WCF components shall be landscaped with a buffer of plant materials that effectively screen the view of that part of the WCF from adjacent property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.
  - c. In locations where the visual impact of the WCF would be minimal, the landscaping requirement may be reduced or waived altogether by Licensor.
- (8) Noise. Noise generated on the site must not exceed the levels permitted by local standards, except as may be expressly permitted by local approval.
- (9) Additional design requirements shall be applicable to the various types of WCFs

as specified below:

- a. Base Stations. Any antenna installed on a structure other than a municipal structure (including, but not limited to the antennas and accessory equipment) shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.
- b. Alternative Tower Structures located in the Right-of-Way. In addition to the other criteria contained in this Exhibit and the Monument Municipal Codes, an Alternative Tower Structure located in the right-of-way shall:
  - i. With respect to its pole mounted components, be located on an existing utility pole serving a utility; or
  - ii. Be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Tower Structure will be located; or
  - iii. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by Licensor and any communications companies on utility poles near the proposed Alternative Tower Structure;
  - iv. Be sized to minimize the negative aesthetic impacts to the right-of-way;
  - v. Be designed such that antenna installations near traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be negatively impacted and so as not to create a visual distraction to vehicular traffic;
  - vi. Require any ground mounted WCF components be located in a manner necessary to address both public safety and aesthetic concerns under local requirements, and may, where appropriate, require a flush-to-grade underground equipment vault; and
- c. Related Accessory Equipment. Accessory equipment shall meet the following requirements:
  - i. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;
  - ii. The total footprint coverage area of the accessory equipment shall not exceed thirty-six (36) square feet;
  - iii. Accessory equipment, including but not limited to remote radio units, shall be located out of sight by locating behind landscaping, parapet walls, within the pole, behind an attached sign on a pole or underground. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

- iv. Notwithstanding subsections (i) - (iii), accessory equipment shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. The location of such equipment must comply with the Americans With Disabilities Act and all Applicable Law.
- (10) Setbacks and Separation. The minimum setbacks and separation requirements of the Monument Municipal Code shall apply to all WCFs and each Supplemental Site Permit.
- (11) Nothing in the Agreement or this Exhibit B shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular or wireless broadband facilities in the PROW, or the installation of macro wireless towers, or poles intended for macro facilities.
- (12) For the purposes of interpreting this Agreement, including Exhibit B, the following definitions shall apply:
- a. *Alternative tower structure* means any man-made trees, clock towers, bell steeples, light poles, water towers, farm silos, or similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers so as to make them architecturally compatible with the surrounding area.
  - b. *Base station* means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user Equipment and a communications network. The definition of Base Station does not include or encompass a Tower or any equipment associated with a Tower. Base Station does include, without limitation:
    - i. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Licensor, has been reviewed and approved under the Licensor's applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
    - ii. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell Networks) that, at the time the relevant application is filed with the Licensor, has been reviewed and approved under the Licensor's applicable zoning or siting process, or under another State or local regulatory review

process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of Base Station does not include any structure that, at the time the relevant application is filed with the Licensor, does not support or house equipment described in Sub-paragraphs (A) and (B) above.

## EXHIBIT C

### ATTACHMENTS TO LICENSOR-OWNED TRAFFIC SIGNAL FACILITIES

#### Traffic Signal Pole Requirements

1. Traffic signal poles already supporting police or fire safety equipment are not eligible to be considered for Company's WCF. Company's WCF placed on traffic signal poles may be required to be relocated at any time if the Licensor-owned infrastructure is needed for placement of police or fire safety equipment.
2. Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading shall require an engineering analysis stamped by a Colorado licensed professional engineer.
3. Installations on traffic signal poles cannot alter the poles in any way. Therefore, all attachments must be banded. Drilling and taping is not allowed.
4. All cabling must be external to the pole to eliminate the possibility of interference with existing signal cables and conductors.
5. Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required and shall be reviewed on a case-by-case basis.
6. Analysis must be provided to show the proposed Equipment shall not interfere with the Licensor's wireless network operating in the 900 MHz and 5.8 GHz frequencies.
7. For installations on traffic signal poles, involved personnel must hold at least a Level I IMSA Traffic Signal certification (level II preferred) to demonstrate comprehension of the implications of any negative impacts to the Licensor's traffic signal infrastructure.
8. Any installation or servicing of WCF located on traffic signal poles shall be coordinated with the Licensor's Traffic Operations and Traffic Engineering groups a minimum of three business days in advance.
9. WCF located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Company due to any work performed by or authorized by the Licensor.