

**WIRELESS COMMUNICATIONS FACILITIES  
MASTER LICENSE AGREEMENT**

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT (“Agreement”) is entered into this \_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the City of Longmont, Colorado (“Licensor”) and \_\_\_\_\_, a \_\_\_\_\_ company 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 1.4 below) that serves [its wireless carrier customers] OR AS APPLICABLE [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 (as defined in Sections 1.14, 1.11 and 1.12 respectively, below) (“PROW”).

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

D. The Company will agree to comply with Licensor’s PROW and land use requirements as provided herein.

**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. To the extent this Agreement refers to terms that are defined in Chapter 15.10 and any other applicable provisions of the Longmont Municipal Code, as amended, those definitions shall apply.

- 1.1 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with, the Company.
- 1.2 “Alternative Tower Structure” means an innovative wireless telecommunications tower design such as an artificial tree, clock tower, grain silo, bell tower, false chimney, steeple, light pole, windmill, and similar design mounting structures that camouflage or conceal the presence of wireless telecommunications antennas or towers. Alternative tower

structures may also include utilization of traffic signal street light pole or similar structure within a public right-of-way or freestanding structure for small cell facilities.

- 1.3 “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.
- 1.4 “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 and damaged electrical and communications facilities.
- 1.5 “Equipment” means Small Cell antennas and other wireless communications 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 Site Supplement (as defined below) and includes, but is not limited to, nodes, antennas, fiber optic cable, coaxial cable, wires, frequencies, technology, conduits and pipes, a pole, and associated and appurtenant equipment on the pole or on the ground deemed by Company necessary to operate the Wireless Site and uses intended thereto.
- 1.6 “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 City of Longmont.
- 1.8 “Owner” means a person with a legal or equitable interest in ownership of real or personal property.
- 1.9 “Person” means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.
- 1.10 “Public Property” means any real property owned by the Licensor other than Public Rights-of-Way.
- 1.11 “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, 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.

- 1.12 “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.
- 1.13 “Supplemental Site License” means a document, substantially in the form attached as Exhibit A. Each Wireless Site installation will be subject to a Supplemental Site License.
- 1.14 “Wireless Communications Facility” or “WCF” means a wireless telecommunications facility as defined in Section 15.10.010(F) of the Longmont Municipal Code.
- 1.15 “Wireless Site” means a location on Public Rights-of-Way selected for the Company’s deployment of Wireless Communications Facilities, including Small Cell Facilities.

## 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 License. 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. 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.
- 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) Licensor’s street light poles, which may include on street lighting poles in the PROW that are purchased by the Company and assigned to

the Licensor, (ii) Licensor's traffic signal poles or other Licensor-owned poles in the PROW under the terms of this Agreement, (iii) third-party poles in the PROW under the terms of a fully executed pole attachment agreement with the Owner of such poles, or (iv) in instances where no other reasonable opportunity for attachment exists, on the Company's proprietary poles newly installed in the PROW; provided however that stand-alone poles for WCFs in the PROW shall be separated from other stand-alone poles for WCFs by a distance of at least 600 feet. The Company shall be responsible for complying with all obligations under this Agreement regarding 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.

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 ten (10) years from the Effective Date (the "Term"), unless renewed as herein provided in Section 7.2. The term of each Supplemental Site License shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site License shall be ten (10) years. If the Term of this Agreement expires before the end of any ten (10) year Supplemental Site License term, this Agreement shall remain in effect only with respect to any Supplemental Site License through the end of such Supplemental Site License'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 Longmont Municipal Code as it exists on the effective date of this Agreement, the Longmont Municipal Code prevails, except as federal or state law may preempt or act to modify the Longmont Municipal Code at present or in the future. Future amendments to the Longmont Municipal Code shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, so long as the Longmont Municipal Code changes do not alter any material rights granted herein, and

except as federal or state law may preempt or act to modify the Longmont 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.
- 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 **[SECTION LIKELY NOT APPLICABLE FOR SERVICE PROVIDERS – SHOULD BE USED FOR WIRELESS INFRASTRUCTURE COMPANIES]** Sub-Tenants and Sub-Licensees of Company. The parties understand and agree that the Company intends to 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 City.

### **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 License pursuant to the terms and conditions of this Agreement. The

Company may terminate any Supplemental Site License 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 License, which fees are non-refundable, are comparable to Licensor's fees for similar permits, and may be modified in the future to be consistent with fees then imposed on like activities. The foregoing fees include up to [\_\_\_\_\_] (\_\_\_\_) hours of inspection by the Licensor. If the Licensor reasonably requires additional inspection beyond [\_\_\_\_\_] (\_\_\_\_) hours then Company agrees to pay for such inspections at the rate of [\$30.00] per hour or at such rate as may be charged by the Licensor for similar inspections in the future. The Company shall also submit such other information as may be reasonably requested by the Licensor.

3.2 Permitted Use of PROW. 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 WCFs 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 WCFs 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 Licenses for proposed Wireless Sites for which the Company is seeking administrative approval. A single Supplemental Site License may seek authority for up to ten (10) WCFs under this Agreement. The 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 License, the Licensor shall process the request within time as designated by Applicable Law. The City Manager or his or her designee may execute the Supplemental Site License on behalf of the Licensor. Notwithstanding the foregoing, if the Supplemental Site License 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 License is complete, the Licensor will determine whether the location (and any existing pole) identified by the Company as a Wireless Site is within the PROW.

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 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 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, 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 by the Company at its sole expense.
- 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 31<sup>st</sup> of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, 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 License 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 License, 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. In the event a WCF ceases operations for six consecutive months, it shall be removed pursuant to LMC 15.05.170.A.8.a.

3.10 Signal Interference Prohibited.

3.10.1 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.

3.10.2 Response Protocol. The protocol for responding to events of interference will require the Company to provide the General Manager of Public Works and Natural Resources an interference remediation report that includes the following items:

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

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

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

3.10.3 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.

**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 24/7 at: \_\_\_\_\_ and email: \_\_\_\_\_.

4.1.2 Level Two Contact: In the event the Company's network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the Licensor may contact:

\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_ or

\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

4.1.3 Level Three Contact: In the event the emergency situation calls for a coordinated effort between the Licensor's and Company's management team, the Licensor may contact:

\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

4.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the emergency contact information current at all times with the General Manager of Public Works and Natural Resources.

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 will make every reasonable effort to coordinate its emergency response with the Licensor. To that end, prior to entering the PROW, the Company will use the following emergency contacts to give notice to the Licensor of the Network emergency and an estimated time period to address the situation:

The Licensor's public safety communications dispatch may be reached 24/7 at: [INSERT CITY TELEPHONE NUMBER] and electronically at [INSERT CITY EMAIL ADDRESS].

If contact cannot be made with the Licensor in this manner, the Company shall call 9-1-1.

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.

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 and must provide written approval on any settlements of claims prior to the execution of any settlement agreements. Should the Indemnified Party object to a proposed settlement agreement, it shall assume all obligations and all costs of the continued defense of the action.
- 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 or his/her assistants or any employees of the Indemnified Party or its agents but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the Indemnified Party by the Company.
- 5.1.4 Neither party will be liable under this Agreement for consequential, indirect, special, 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 with a minimum 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 commercial general liability insurance, which has coverage as broad as such policy, with a limit of not less than \$2,000,000; (iii) Workers' Compensation Insurance as required by law; and (iv) employers' liability insurance with minimum 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. 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 insurance, shall apply to and name the Licensor as an additional insured, and shall provide a defense and indemnification to the Licensor regardless of the Licensor's fault or wrongdoing. The insurance shall indemnify and defend the Licensor against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. 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 any endorsements or copies of policies determined by the Licensor to be necessary 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 of any coverage or modification of any coverage 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-VIII.

**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; 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.
- 6.2 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 General Manager of Public Works or his or her 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 hearing officer may impose remedies of revocation 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 General Manager of Public Works or his or her 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 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 Licenses and the Agreement as a whole, or any Supplemental Site License subject to the default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the 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 the 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 License as provided for herein, or any of the rights or privileges therein granted, without the prior written consent of the Licensor, except that such consent shall not be required for a transfer or assignment to an Affiliate. 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’s written 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 License 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 [THIS SECTION NOT NECESSARY WHEN THE COMPANY IS A WIRELESS SERVICE PROVIDER] 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 renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and 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. 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; (ii) by prepaid overnight delivery service; or (iii) by email transmission. 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:

City of Longmont  
350 Kimbark Street  
Longmont, CO 80501  
ATTN: [TITLE OF PARTY TO WHOM NOTICE IS SENT]

with a copy to:

City of Longmont  
City Attorney's Office  
408 Third Avenue  
Longmont, CO 80501

if to Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTN: \_\_\_\_\_

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 email or 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 Supplemental Site Licenses) 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 Boulder 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.

*[Signature page follows.]*

*[Signatures on WIRELESS COMMUNICATIONS FACILITIES  
MASTER LICENSE AGREEMENT.]*

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.

CITY OF LONGMONT

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
ORIGINATING DEPARTMENT

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

[COMPANY]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**

**SUPPLEMENTAL SITE LICENSE**

This Supplemental Site License, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) between the City of Longmont, hereinafter designated “Licensor,” and \_\_\_\_\_, hereinafter designated “Company”:

1. **Supplemental Site License.** This is a Supplemental Site License 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 \_\_\_\_\_, 201\_ (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 License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License 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 further described in Attachment 1, Table 1 attached hereto.
3. **WCF Equipment.** The WCFs to be installed at the Wireless Site are described in Attachment 1, Table 2 attached hereto.
4. **Term.** The term of this Supplemental Site License shall be as set forth in Section 2.3 of the Agreement.
5. **Fees.** If this Supplemental Site License 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(i) of the Agreement.
6. **Commencement Date.** The commencement date of this Supplemental Site License 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 this Supplemental Site License. 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. Upon such termination, all or part of this Supplemental Site License, 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.

*[Signature page follows.]*

*[Signature page for Supplemental Site License.]*

EXECUTED to be effective as of the date shown above.

LICENSOR:

CITY OF LONGMONT, COLORADO

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

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

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

APPROVED AS TO FORM

BY: \_\_\_\_\_

Assistant City Attorney

COMPANY:

[INSERT]

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

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

Its: \_\_\_\_\_

**Attachments:**

Attachment 1



**ATTACHMENT 1**

**Table 1**

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

**Table 2**

<b>WIRELESS SITE ID NO.</b>	<b>PROPOSED POLE ALTERATION</b>	<b>RESULTANT POLE HEIGHT</b>	<b>TYPE OF EQUIPMENT ATTACHED</b>

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

1. Plot plan, 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, and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance.
  - a. The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements, and shall comply with all submittal requirements for the City of Longmont Land Development Code.
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 Longmont Municipal Code.

B. Design Standards.

- (1) In addition to any requirements of the Longmont 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 Principles.

- 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 and fencing shall be designed and located outside of intersection sight distance triangles and in accordance with the City of Longmont Land Development Code (LDC) sections\_\_15.05.040, 15.05.100, and Section 205.02 of the Design Standards and Construction Specifications respectively.

- (3) Camouflage/Concealment. WCFs shall comply with LMC section 15.05.170.A.4. 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 tower 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. WCFs may be required to be designed and constructed to permit the support structure to accommodate equipment from at least two (2) wireless service providers on the same support structure unless Licensor approves an alternative design. Company shall not unfairly exclude a competitor from using the same facility or location. With respect to Eligible Facilities Requests, the Parties acknowledge that it is the intent of this Agreement to provide general authorization to use the ROW for Small Cell Facilities as permitted under state, federal, and local law. The designs approved by the City for the installation of Small Cell Facilities, as authorized in the supplements and/or authorizations that will govern each specific site are intended to be concealment elements under 47 C.F.R. §1.40001 (as amended). All applications for collocations and/or modifications of facilities governed by this Agreement will be subject to applicable provisions of state, federal, and local law, including without limitation all other applicable and relevant provisions of 47 C.F.R. §1.40001 (as amended). 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 City standards.
  - b. Ground-mounted WCF components shall be designed and installed consistent with Section 15.05.170.A.4 of the Land Development Code, as amended.
- (8) Noise. Noise generated on the site must not exceed the levels permitted by local standards.
- (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 Longmont 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 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 for all WCFs 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 WCFs must comply with the Americans With Disabilities Act and all Applicable Law.
  - v. The antenna or power-radiating components of a small cell facility must be mounted a minimum of 12’ above ground.



- (10) Setbacks and Separation. The minimum setbacks and separation requirements of the Longmont Municipal Code shall apply to all WCFs and each Supplemental Site License.
- (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.

## EXHIBIT C

### ATTACHMENTS TO LICENSOR-OWNED TRAFFIC SIGNAL FACILITIES

*[To be included and/or modified at Licensor's request to be consistent with Licensor's policies and/or ordinances. The sample language below reflects the traffic signal attachment policies of Aurora, Colorado.]*

#### **Traffic Signal Pole Requirements**

Traffic signal poles already supporting police 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 equipment.

Traffic signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading will require an engineering analysis stamped by a Colorado licensed professional engineer.

Installations on traffic signal poles cannot alter the poles in any way. Therefore, all attachments must be banded. Drilling and taping is not allowed.

All cabling must be external to the pole to eliminate the possibility of interference with existing signal cables and conductors.

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 will be reviewed on a case-by-case basis.

Analysis must be provided to show the proposed equipment will not interfere with the Licensor's wireless network operating in the 900 MHz and 5.8 GHz frequencies.

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.

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.

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.