

RESOLUTION 2019-060
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO SIGN A MASTER LICENSE AGREEMENT
WITH SMARTLINK FOR AT&T SMALL WIRELESS COMMUNICATION EQUIPMENT
ATTACHMENTS ON CITY FACILITIES IN PUBLIC RIGHTS-OF-WAY

WHEREAS, the City operates through the Electric Utility enterprise light poles located in public rights-of-way throughout Fort Collins; and

WHEREAS, federal and state telecommunication laws require the City to permit the attachment of small wireless telecommunication (i.e., cellular) devices on municipally owned infrastructure in public rights-of-way (“municipal facilities”); and

WHEREAS, Chapter 23 of the City Code and Article 3 of the City Land Use Code establish requirements for permitting, siting and installing, and design of small wireless telecommunication facilities and equipment within the City’s municipal boundaries; and

WHEREAS, pursuant to Section 23-177(d) of the City Code, carriers applying for permits to attach small wireless devices to municipal facilities must enter into a license agreement with the City to address general conditions and site-specific aspects of each attachment; and

WHEREAS, in 2019 New Cingular Wireless PCS, LLC, d/b/a Smartlink (“Smartlink”) approached the City on behalf of AT&T to secure rights to attach to municipal facilities; and

WHEREAS, City Engineering, Planning, and Electric Utility staff, and Smartlink have negotiated license terms applicable to the Smartlink/AT&T attachments, and reduced those terms to a Master License Agreement, as attached hereto as Exhibit “A” (the “MLA”); and

WHEREAS, the purpose of the MLA is to allow Smartlink to attach AT&T network equipment to municipal facilities in compliance with City Code and Land Use Code and certain design parameters, and to establish criteria for Smartlink to replace municipal facilities or install new structures in order to operate AT&T’s small wireless communication network; and

WHEREAS, Section 23-113(b)(1) and Section 23-140 of the City Code authorize the City Manager to lease or license any and all interests in property owned in the name of the City and to establish such rules and regulations governing the use of facilities owned or operated by the City, if the City Council first finds that the lease or license is in the best interests of the City; and

WHEREAS, the MLA is a City Code requirement for access to public rights-of-way in the City and allows the City to comply with federal and state telecommunication laws, while maintaining reasonable control over use of municipal facilities; and

WHEREAS, the license of access to attach to City light poles pursuant to the MLA will provide specific benefits to residents of the City and Electric Utility ratepayers by generating revenues to offset maintenance, operation, and replacement of such utility-operated facilities; and

WHEREAS, the Engineering, Planning, and Utility Services Departments support the conditions established in the MLA, which will allow the City and Smartlink/AT&T to improve local availability of wireless communication services in furtherance of City goals.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds that the license of access to attach to municipal facilities in public rights-of-way as provided herein is in the best interests of City residents and Electric Utility ratepayers.

Section 3. That the City Manager is hereby authorized to execute a Master License Agreement in substantially the form attached hereto as Exhibit "A", and incorporated herein by this reference, to license access by New Cingular Wireless PCS, LLC, d/b/a Smartlink, on behalf of AT&T, to municipal facilities, including light poles, in public rights-of-way on terms and conditions consistent with this Resolution, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City, as long as such changes do not materially increase the size or change the character of the property to be licensed.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of May, A.D. 2019.


Mayor

ATTEST:


Chief Deputy City Clerk



AGREEMENT BETWEEN THE CITY OF FORT COLLINS, COLORADO AND NEW CINGULAR WIRELESS PCS, LLC FOR THE USE OF LICENSOR PROPERTY IN CONNECTION WITH THE OPERATION OF A WIRELESS NETWORK

This Agreement is made and entered into by and between the CITY OF FORT COLLINS, COLORADO, a municipal corporation (“Licensor”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“Licensee”). Licensor and Licensee may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

This Agreement is made with reference to the following Recitals, each of which is deemed to be a material term and provision of this Agreement:

A. Licensor is the owner of certain municipal facilities located in public highways situated within Licensor’s city limits.

B. Licensee is duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees, are authorized to conduct business in the State of Colorado.

C. Licensee currently owns and/or controls, maintains and operates a wireless communication network serving residents in the City of Fort Collins, using towers, monopoles, and other macro-cell technology (collectively the “Network”).

D. For purposes of improving services within the Network, Licensee desires to construct, operate and maintain small cell communication sites from Licensor-owned light and/or utility poles and Licensor’s proprietary poles situated in the Public Highway and, for such purpose, desires to locate, place, attach, install, operate, control, and maintain antennas and other related wireless communication equipment consistent with Small Cell technology (“Equipment”) on Licensor-owned poles in the Public Highway.

E. Licensee will agree to comply with Licensor’s Public Highway use requirements as provided herein and applicable Laws.

F. Licensee is willing to compensate Licensor in exchange for a grant and right to use and physically occupy portions of the poles and/or the Public Highway, including, but not limited to installing Licensee’s proprietary poles in the Public Highway, as provided herein.

AGREEMENT

1. **Definitions and Exhibits.**

1.1. **Definitions.** For the purposes of this Agreement and all Exhibits attached hereto, the following terms, phrases, words and derivations shall have the meaning given herein.

- (a) *Agreement* means this Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network.
- (b) *Attachment Fee or License Fee* means that rental/pole occupation fee described in Section 4.1 of this Agreement.
- (c) *City* means the City of Fort Collins, also referred to herein as “Licensor.”
- (d) *Code* means Licensor’s Charter, City Code, and Land Use Code.
- (e) *Equipment* means Small Cell antennas and other wireless communications equipment utilizing small cell technology that is specifically identified and described in Exhibit A-1 attached to each Supplement Site License (as defined below).
- (f) *Hazardous Substance* means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.
- (g) *Interference* means physical interference and radio frequency interference.
- (h) *Laws* means any applicable federal, state and local laws, statutes, constitutions, City Charter, ordinances, resolutions, regulations, judicial decisions, rules, permits, approvals or other applicable requirements of the Licensor or other governmental entity, agency 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.
- (i) *Macro-cell* means and includes technology associated with operating structures and equipment built for the sole or primary purpose of supporting antennas licensed or authorized by the Federal Communications Commission to provide high powered wireless communication service coverage and the antennas' associated facilities, including private, broadcast, and public safety services; unlicensed wireless services; and fixed wireless services such as backhaul.
- (j) *Master License* means the form of the license granted by this Agreement, described in Section 2 below, and as supplemented by a Supplemental Site License or Public Highway Access Grant as defined herein. Each Wireless Site will be subject to either a Supplemental Site License or a Public Highway Access Grant.

- (k) *Municipal Facilities* means those Licensor-owned poles and structures located in the Public Highway, including streetlight poles and vertical portions of traffic signal poles that are designated or approved by Licensor as suitable for hosting Equipment.
- (l) *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 Fort Collins, Colorado.
- (m) *Permit* means a permit issued and described in accordance with the Laws, which is used to regulate, monitor and control improvement, construction or excavation activities, or other work or activity, occurring upon or otherwise affecting the Licensor's Public Highway.
- (n) *Physical interference* means 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.
- (o) *Public Highway* means the surface of and the space above and below the public roads, streets and alley right-of-way, and public utility easements or other public ways of any type whatsoever, now or hereafter located and existing within the city limits of Fort Collins, Colorado, and as otherwise defined at § 38-5.5-102, C.R.S.
- (p) *Public Highway Access Grant* means the form of the license granted under the scope of this Agreement for access to the Public Highway in order to attach to the poles and/or structures of a third party(s), and as described in detail on Exhibit A-B.
- (q) *Public Property* means any real property owned by the City other than Public Highways.
- (r) *Radio frequency interference* means the radiation or conduction of radio frequency energy (or electronic noise) produced by electrical and electronic devices at levels that interfere with signals from or the operation of adjacent communication equipment.
- (s) *Small Cell* means compact communication sites as defined more fully in § 29-27-402 (4), C.R.S.
- (t) *Supplement Site License* means the form of the license granted under the scope of this Agreement for access to the Public Highway in order to attach to Municipal Facilities, or to place new freestanding Licensor-owned poles in the Public Highway, and as described in detail on Exhibit A-A.
- (u) *Term* means the period that this Agreement is in effect as described in Section 3.1 of this Agreement.
- (v) *Wireless Site* means a location on a Public Highway selected for the Licensee's deployment of Equipment.

1.2. Exhibits. The following numbered documents, which are occasionally referred to in this Agreement, are formally incorporated and made part of this Agreement by this reference:

- (a) Exhibit A-A: Supplement Site License
- (b) Exhibit A-B: Public Highway Access Grant
- (c) Exhibit A-1: Licensed Area and Description of Facilities
- (d) Exhibit B: Licensee’s Minimum Insurance Requirements
- (e) Exhibit C: Technical Requirements
- (f) Exhibit D: Operational and Design Standards
- (g) Exhibit E: Attachments to City Traffic Signal Facilities

In the event of any conflict or ambiguity between this Agreement, including the above-referenced exhibits (the “Exhibits”), and any other agreement between Licensor and Licensee, this Agreement, together with the Exhibits, shall govern and prevail. In the event of any conflict or ambiguity between this Agreement, including the Exhibits, and any Supplement Site License or Public Highway Access Grant, the Supplement Site License or Public Highway Access Grant shall govern and prevail.

2. Site License Granted and Terms; Supplemental Site Licenses and Public Highway Access Grants.

2.1. License. Licensor, acting in its proprietary capacity as the owner of Municipal Facilities in the Public Highway, hereby grants to Licensee a nonexclusive license (the “Master License”) to use and occupy the Public Highway throughout Licensor’s territorial boundaries, 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 Equipment that may be required to operate at each approved Wireless Site. This grant is subject to the terms, conditions and other provisions set forth in this Agreement, including without limitation Exhibits C and D; the Code and operating procedures of Fort Collins Utilities, Traffic Engineering, Information Technology, Parks & Recreation, and Natural Areas; and all applicable Laws and reasonable regulations of any agency having competent jurisdiction, including limitations on the kind, size, height and width, and ownership of structures in the Public Highway, delivery of notice to adjacent property owners pursuant to Section 7.8, and the manner of attachments. Nothing under this Agreement shall be interpreted to create or vest in the Licensee an easement or other property interest to any Public Property or Public Highway or constitute an assignment of any rights to Public Property or Public Highway. The Licensee shall, at all times, be and remain a licensed user only. Nothing in this Agreement shall be interpreted as a waiver by Licensor of any amendments, rights or benefits created under the Laws that alter Licensor’s level of control over public property and/or use of the Public Highway for telecommunication purposes after execution of this Agreement. All rights of

Licensee herein are subject to such amendments to the Laws, which shall be deemed to amend Licensee's rights hereunder without regard to the Term or Licensee Fees paid by Licensee.

2.2. Use of Licensor Property.

(a) The Supplement Site License allows Licensee to access, occupy and use allocated available space on each identified Municipal Facilities in Exhibit A-1 to each Supplement Site License, and to access, occupy and use the Public Highway to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Equipment, solely for the purpose of Licensee operating a Small Cell Facility. The Supplement Site License also provides the conditions under which Equipment may be attached and installed at a specific location, and under which Licensee may install proprietary poles. Notwithstanding anything to the contrary herein, Equipment deployments under this Agreement shall be in compliance with the requirements of Exhibits C-E of the Master License.

(b) Subject to the following limitations, Licensee shall have access to the Municipal Facilities upon which Equipment is installed 24 hours a day/7 days a week to ensure such facilities comply with the following codes and standards:

- Fort Collins Utilities, Electric Service Standards
- Fort Collins Sign Code
- National Electric Safety Code
- National Electric Code
- At least seventy-two (72) hours prior written notice to Fort Collins Utilities for any non-emergency unplanned work involving de/energizing a Municipal Facility, when an electric service disconnect device is not incorporated into the connection. In the event of an emergency, Licensee shall notify and coordinate with Fort Collins Utilities System Control and Operation office (970-221-6710) before performing work on any Equipment attached to a Municipal Facility.
- Licensor has the right to de-energize service to Equipment and/or deny access for public utility system maintenance outages and in the event of emergencies, including but not limited to police, fire or medical response situations, natural disasters or weather emergencies, and when Licensor's work in the Public Highway otherwise obstructs access to the Equipment.

2.3. Limitations on Use. Except as otherwise expressly provided herein or as determined in Licensor's reasonable discretion based on specific aspects of a proposed site, a Supplement Site License does not authorize Licensee to:

(a) Occupy or use any poles, improvements or structures of any kind, whether within or without the Public Highway, other than the Licensee's proprietary poles at approved locations, and the Municipal Facilities identified in Exhibit A-1 to a Supplement Site License;

(b) Subject to Section 2.6 below, enter upon Public Property and attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate, and/or replace any item of Equipment in or on poles or other structures not owned by either Party located in the Public Highway; nor

- (c) Place any free-standing structure, not including a replacement pole as described in Section 6,
- along the frontage of a locally-designated historic building or other structure subject to Section 106 of the National Historic Preservation Act (NHPA); 16 U.S.C. 470f;
 - other than in alignment with existing trees, utility poles, and streetlights;
 - less than 10 feet from the triangle extension of an alley way flare (to preserve access); or
 - within 100 feet of the apron or access curb cut of a fire station or other adjacent emergency service facility.

2.4 Priority. Licensee's Equipment may be attached to structures as identified in Sections 2.2 and 2.6 in Public Highways with the following order of priority of attachment, except as set forth below or as agreed between the Parties and with a preference for location on arterial streets before collector streets, and collector streets before neighborhood streets:

- (i) Existing light poles lawfully owned and operated by Licensor, a public utility company, or a third-party property owner; then,
- (ii) Existing facilities lawfully owned and operated by a public utility company or third-party property owner; and then
- (iii) Municipal Facilities other than street lighting poles, including traffic poles; and then
- (iv) Poles installed by Licensee at its own expense at locations in the Public Highway and title thereto assigned to Licensor).

Locations may be requested based upon Licensee's technical and radio frequency needs and construction costs, but in any situation where Licensee has a choice of Equipment locations, Licensee shall use good faith efforts to attach to poles in the order indicated above provided, in Licensee's sole discretion, that (a) such poles are at least equally suitable functionally for the operation of Licensee's network and (b) the construction and installation burden associated with such attachment over the length of the Term are similar to Licensee's burden to attach to a pole in the category(ies) below it. Nothing herein is intended to limit any rights Licensee may have in accordance with Laws or the Code to install proprietary poles in the Public Highway if adequate Municipal Facilities or third-party facilities do not exist for the attachment of Equipment, so long as such poles comply with Exhibits C-E and all local standards adopted under Licensor's police powers.

2.5 Alterations. Notwithstanding anything in the Agreement to the contrary, alterations shall be subject to permitting required under Laws, but shall not be subject to additional Licensor approval, to the extent that: (i) such alterations to the attachment involve only substitution of internal components, and do not result in any change to the external appearance, dimensions, or weight of the attachment, or loading impacts on the pole as approved by Licensor or impact multi-modal traffic flow; or (ii) such alterations involve replacement of the attachment with an

attachment that is the same, or smaller in weight and dimensions as the approved attachment and does not impact multi-modal traffic flow. In addition to any other submittal requirements, and if requested by Licensor, Licensee shall provide “load” (structural) calculations for all Municipal Facilities upon which it intends to alter Equipment in the Public Highway. Notwithstanding the foregoing, Licensee may alter its Equipment with like-kind or similar Equipment without prior written approval of the Licensor.

2.6 Additional Installations. The Public Highway Access Grant allows Licensee access to the Public Highway to install its Equipment on existing poles or structures in the Public Highway lawfully owned and operated by third parties. Subject to obtaining the written permission of the owner(s) of the affected pole or structure and any required Permits (and paying any standard fees), Licensor hereby authorizes and permits Licensee to enter upon the Public Highway and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Equipment in or on existing third-party owned poles or other structures in the Public Highway. There will be no Attachment Fee or License Fee due to Licensor for a Public Highway Access Grant. Notwithstanding anything to the contrary contained herein, all attachments to third-party-owned poles must comply with Exhibits C and D and applicable Laws, and Licensee must provide public notice of the installation as required by Section 7.8. Licensee shall have access to the Public Highway 24 hours a day/7 days a week. Licensee acknowledges that it may have to relocate its Equipment on third-party poles in the Public Highway at its expense if the third party is required to underground its equipment, and Licensor shall have no liability or responsibility for any such costs.

3. **Term of Supplements and Agreement; Cancellation; Termination; Removal or Abandonment at Expiration.**

3.1. Agreement Term. This Agreement shall be in effect for a period of twenty (20) years commencing on the date that this Agreement is fully executed (the “Execution Date”), and expiring on the EARLIER of (a) the twentieth (20th) anniversary of the Execution Date, or (b) the expiration of the last Supplement Term (unless sooner cancelled or terminated as provided in this Section 3) (the “Term”).

3.2. Supplement Term. Subject to the remaining balance of the Agreement Term under Section 3.1, each Supplement Site License or Public Highway Access Grant shall be in effect for a period of up to fifteen (15) years commencing on the “Commencement Date” determined in accordance with each Supplement Site License or Public Highway Access Grant, and expiring on the day before the fifteenth (15th) anniversary of the Commencement Date unless sooner cancelled or terminated as provided herein (the “Supplement Term”). Licensee shall commence construction of the Site within twelve (12) months of signature of the Supplement Site License; provided, however, that such twelve (12) month period will be extended as reasonably necessary if there are delays in obtaining necessary permits, licenses, rights-of-way, easements and other rights required to commence installation of the Licensee’s Equipment due to circumstances beyond the Licensee’s reasonable control. Provided Licensee is not in breach of the Master License, Supplement Site License, or Public Highway Access Grant, the Supplement Term will automatically be extended for successive five (5) year periods (each, a “Renewal Term”), with the first Renewal Term commencing immediately upon the expiration of the initial period of the Supplement Term, and

each additional Renewal Term commencing immediately upon the expiration of the preceding Renewal Term unless notice of non-extension is provided to Licensee by Licensor at least ninety (90) days prior to the expiration of the initial Supplement Term or then current Renewal Term, as applicable. All of the provisions of this Agreement shall be in effect during the Supplement Term and any Renewal Term. At no time shall a Supplement Term create a right that extends beyond the Agreement Term described in Section 3.1 and as may be extended by subsequent written agreement of the Parties.

3.3 Licensee Cancellation. Licensee may cancel this Agreement or any Supplement Site License or Public Highway Access Grant before the date of expiration by providing the Licensor with ninety (90) days express written notice of cancellation. Any prepaid License Fee shall be retained by Licensor, and Licensee shall continue to pay the License Fee, if applicable, for each affected site until Licensee has removed all equipment at such site and restored Licensor's property to its original condition, normal wear and tear excepted. This Agreement and all Supplement Site Licenses and Public Highway Access Grants may only be cancelled or terminated as provided in this Agreement or in the Supplement Site License or Public Highway Access Grant.

3.4. Abandonment. If Licensee abandons or discontinues the use of a Municipal Facility, a third-party pole or a Licensee proprietary pole for a period of six (6) or more consecutive months, Licensee is deemed to surrender all license rights and agrees to remove all Equipment for such location at Licensee's expense. In the event Licensee is unable or refuses to remove such Equipment upon abandonment and does not elect to transfer title and ownership of such Equipment to Licensor as-is, Licensor may, upon sixty (60) days' advance written notice to Licensee, authorize removal and Licensee shall be responsible for all costs incurred for such removal, including by lien(s) against the Licensee property described in the associated Supplement Site License or Public Highway Access Grant. Licensee shall continue to pay a License Fee for each affected site until all equipment at such site has been removed and Licensor's property restored to its original condition, normal wear and tear excepted. Licensor reserves the right to monitor operation of all Licensee attachments and provide Licensee with notice under this Section for removal of abandoned Equipment.

4. Fees and Charges. Licensee shall be solely responsible for the payment of all fees and charges in connection with Licensee's performance under this Agreement, including those set forth as follows:

4.1. License Fee.

(a) Annual Fee. Licensee shall pay to Licensor an annual fee equal to \$270.00 for the use of each Municipal Facility by Licensee pursuant to a Supplement Site License, as of the Commencement Date for each Supplement Site License, in order for Licensee to occupy and use space on the Municipal Facilities. In the event any Law provides Licensee the right to use the Municipal Facilities at an annual rate less than the rate set forth herein, and specifically preempts the Licensor's ability to continue the License Fee through the duration of the Term, the annual License Fee shall be reduced to such amount on the next anniversary of the Commencement Date (Licensee expressly waives any right to an earlier adjustment even if required by such Law) for all existing Supplement Site Licenses, and

all new Supplement Site Licenses shall be entered into at such new rate. In such event, the Parties shall enter into an amendment to this Agreement documenting such amount. The annual License Fee shall not apply or be charged for attachments to third party facilities in the Public Highway.

(b) **Fee Payment.** The annual fee paid per Municipal Facility location is non-refundable and is payable within ninety (90) days of the initial Commencement Date, and on or before each subsequent annual anniversary of the Commencement Date during the Supplement Term (or until such earlier time as such Supplement Site License is terminated). Upon agreement of the Parties, Licensee may pay the License Fee by electronic funds transfer and in such event, Licensor agrees to provide to Licensee bank routing information for such purpose upon request of Licensee. For any party to whom License Fee payments are to be made, Licensor or any successor in interest of Licensor hereby agrees to provide to Licensee (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; and (ii) complete and fully executed state and local withholding forms if required. License Fees shall accrue in accordance with this Agreement, but Licensee shall have no obligation to deliver License Fee payments until the requested documentation has been received by Licensee. Upon receipt of the requested documentation, Licensee shall deliver the accrued rental payments as directed by Licensor.

4.2. **Permit.** No payment is collected under this Agreement for any Permit issued in connection with the installation of Equipment at any Municipal Facility. Permit requirements, fees and charges are solely governed by the requirements imposed by the Code.

4.3 **Taxes.** Licensee shall pay all applicable city, county and state taxes levied, assessed, or imposed by reason of this Agreement or those related to any of Licensee's Equipment and/or provided services.

4.4. **Utilities and Electric Meter.** The Licensee will be responsible for telephone, cable, broadband, electric and any other utility service used or consumed by the Licensee in connection with using its Equipment. In no event will the Licensee secure its utilities by sub-metering from the City. Licensee shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as required by the electric provider for the operation of its Equipment. Licensee shall be responsible for paying all charges for any electricity furnished to serve the Equipment.

4.5. **Payments Made.** All fees and/or additional payments shall be payable to Licensor at:

Finance Department
City of Fort Collins
Streetlight account
P.O. Box 580
Fort Collins, CO 80522-0580

or to such other persons or at such other places as Licensor may designate in writing. All payments shall be in lawful money of the United States of America.

5. **Additional License and Permits Required by Code.** To the extent not in contravention of any applicable Law, all Equipment will be installed, operated and maintained by or on behalf of Licensee in accordance with applicable provisions of the Code regulating wireless communications facilities. Licensee or its designee may be required to apply for and obtain a local government Permit for work performed within the Public Highway, and the Public Highway will be used according to the plans submitted by Licensee and approved pursuant to a Permit. Execution of this Agreement or any Supplement Site License or Public Highway Access Grant does not constitute the issuance of such a Permit though may be a condition to receiving such a permit.

6. **Basic Design and Installation Requirements for Using Municipal Facilities.** The basic design of the Equipment will be described in Exhibit A-1 to each Supplement Site License. All of Licensee's construction and installation work for its Equipment on the Municipal Facilities shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner and promptly completed. When Licensee and Licensor have agreed on a Municipal Facility as a suitable site for Licensee's Equipment based on aesthetic or structural considerations, but the existing Licensor-owned pole needs to be replaced to accommodate the Equipment, then Licensee shall pay all costs related to replacing the Licensor-owned pole, including but not limited to installation of the replacement pole (the "Replacement Pole"), transfer of the streetlight fixtures, traffic signal, and/or other items attached to the existing Licensor-owned pole to the Replacement Pole, and removal and salvage of the existing Licensor-owned pole to the Licensor. Payment of the pole replacement costs does not provide Licensee with any ownership interest in the Replacement Pole. Licensor will be deemed to own the original Licensor-owned pole and the Replacement Pole. The installation or attachment of the Equipment to the Replacement Pole shall be at Licensee's sole cost and expense. If a Replacement Pole needs to be replaced because of damage due to an accident, natural disaster or other cause, or is at the end of its useful life, Licensor shall be responsible for the cost of a standard Licensor-owned pole and Licensee shall be responsible for the cost of replacement above the cost of a standard Licensor-owned pole, if a higher standard is required to host Licensee's Equipment.

7. **Common Conditions or Requirements Applicable to Supplement Site Licenses or Public Highway Access Grants Approved Under this Agreement.**

7.1. Equipment Locations.

(a) For each installation, Licensee or its designee shall submit plans and specifications for Licensor review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Upon Licensor approval, the approved plans are inserted in Exhibit A-1 to the applicable Supplement Site License or Public Highway Access Grant. If Licensee desires to change or add new locations, Licensee will submit a proposed Supplement Site License indicating the additional Municipal Facilities for which it seeks permission to use and a list of immediately adjacent property owner(s).

(b) All proprietary poles installed by Licensee shall be located preferably closest to the corner of two intersecting streets, within alleyways where feasible, or closest to the common side yard property line between adjacent adjoining properties.

(c) Licensee shall maintain a current inventory of Wireless Sites governed by this Agreement throughout the Term. Once during the initial term and during each extension term, as described in Section 3.2, Licensee shall provide to Licensor, upon Licensor's request, an inventory of Wireless Sites under each active Supplement Site License or Public Highway Access Grant. Licensee shall otherwise provide to Licensor, at Licensor's reasonable request, a copy of the inventory of Wireless Sites governed by this Agreement within ninety (90) days of such request. Licensor's request for a current inventory shall be limited to no more than one time per calendar year throughout the Term. The inventory shall include GIS coordinates, date of installation, the Licensee Site ID#, type of pole used for installation, and pole owner at each Wireless Site.

(d) If Licensor determines there are unauthorized Wireless Sites after comparing the inventory of Wireless Sites to internal records or through any other means, Licensor shall provide written notice to the Licensee of such unauthorized Wireless Sites and the Licensee shall have thirty (30) days thereafter in which to submit an application request for a Supplement Site License or Public Highway Access Grant, as appropriate for that location, or alternatively to remove the Equipment and restore the property at the Licensee's expense. If the Licensee fails to submit a request for a Supplement Site License or Public Highway Access Grant, or if the request is denied, then Licensee shall remove the Equipment from the Public Highway 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 Licensee must pay the required fees (if any) for a new Wireless Site plus interest at the rate of eight percent (8%) per annum from the date of the original installation but only to the extent the license fee was not previously paid with respect to the Wireless Site.

7.2. Damage to Licensor Property. If Licensee damages or disturbs the surface or subsurface of any Public Highway or adjoining property, pole, streetlight fixture, traffic signal, landscaping, or other public or private improvement, in the exercise of the rights granted through this Agreement, Licensee will promptly, at its own expense, and in a manner reasonably acceptable to Licensor and all affected property owners, repair the damage or disturbance within thirty (30) days of the damaging event.

7.3. Public Emergency. In the event of an emergency or to protect the public health or safety, prior to the Licensor accessing or performing any work on a Municipal Facility on which Licensee has installed Equipment, Licensor may require Licensee to deactivate such Equipment if any of Licensor's employees or agents must move closer to the Equipment than the FCC recommended minimum distance. In such case, Licensor will contact Licensee at (800) 832-6662 to request immediate deactivation.

7.4. Pole Replacement.

(a) Subject to Sections 6 and 7.4(f), if a Municipal Facility needs replacement or repair, Licensee shall have the right, but not the obligation, to immediately replace the same at Licensor's cost up to the amount Licensor would pay to perform the same work. In such event, Licensor shall reimburse Licensee within thirty (30) days of Licensee's receipt of

an invoice. However, in the event Licensee elects in writing to have Licensor replace the Municipal Facility, Licensor shall perform such replacement within thirty (30) days thereafter, and Licensee shall cooperate with Licensor to temporarily relocate its Equipment, if necessary. Upon completion of the replacement, Licensor shall notify Licensee in order for Licensee to reinstall its Equipment.

(b) At Licensee's option, Licensee may provide to Licensor, at Licensee's cost, a spare pole sufficient to serve as a replacement pole, which will be stored at Licensor's Utility Services Yard (the "Yard") at no cost to Licensee, and which will be available for use by Licensor and Licensee to replace the Municipal Facility as provided in this Section 7.4.

(c) In the event Licensee provides a spare pole, and in lieu of Licensee performing the replacement, Licensor will use the spare pole to replace a damaged existing pole within forty-eight (48) hours of its receipt of notice regarding the need for replacement and shall deliver the damaged pole and any damaged Equipment to the Yard.

(d) Licensor will contact Licensee to pick up the damaged Equipment and Licensee can reinstall its Equipment once the replacement pole is installed and functioning as a Municipal Facility.

(e) Licensee shall have the right to temporarily use another Municipal Facility for its operation during the replacement period at a location reasonably acceptable to the Parties.

(f) In the event Licensor is responsible for replacing the Municipal Facility with a Replacement Pole, Licensor shall only be responsible for the cost of a standard pole, and Licensee shall be responsible for the cost of the Replacement Pole in excess of the cost of a standard pole.

7.5. Removal and Relocation.

(a) Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its Equipment installations. Licensee shall at Licensor's direction and upon the longer of ninety (90) days prior written notice to Licensee or, the written notice period provided by any third party if a third party is requiring the relocation of Licensee's Equipment installation in the Public Highway, relocate such Equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (i) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (ii) because the Equipment is interfering with or adversely affecting proper operation of Licensor-owned poles, traffic signals, communications, or other Municipal Facilities; or (iii) Licensor is abandoning or removing the Municipal Facility. In any such case, Licensor shall use reasonable efforts to afford Licensee a reasonably equivalent alternate location and shall expedite permitting for the alternate location. If Licensee shall fail to relocate any Equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the Equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal, within thirty (30) days of the date of a written demand for this payment from the Licensor.

(b) In the event Licensee desires to relocate any Equipment from one Municipal Facility to another, Licensee shall so advise Licensor. Licensor will use reasonable efforts to accommodate Licensee by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Agreement.

(c) In lieu of the relocation of Licensee's Equipment, in the case of an abandonment or removal of a Municipal Facility as provided in Section 7.5(a) (iii), unless the Municipal Facility is needed for a legitimate Licensor purpose, Licensee shall have right to purchase the Municipal Facility, and continue to use the same pursuant to the then existing Supplement Site License, at a commercially reasonable price commensurate with its then existing value and terms agreeable to the Parties. Licensee and Licensor shall document such transfer of ownership via a commercially reasonable bill of sale.

7.6. Non-exclusiveness. Subject to Section 7.7(d), the rights and privileges granted to Licensee under this Agreement, and each Supplement Site License or Public Highway Access Grant described herein, are nonexclusive and may be subject to colocation requirements set by Law.

7.7. Non-interference. The following provisions shall apply to ensure and/or avoid interference (both physical and radio frequency) resulting from Licensee's installation, operation and/or maintenance of a Wireless Site:

(a) RF Interference. Licensee shall ensure its Equipment will not cause radio frequency interference with Licensor's wireless communication facilities or devices, cable

television, broadcast radio or television systems, satellite broadcast systems, or Licensor traffic, public safety or other communications signal equipment at any time of Equipment operation.

(b) Existing Uses. Licensee shall not interfere in any manner with any uses of public property including Public Highway, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, streetlight fixtures, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner(s) of the affected property or properties.

(c) Licensor Communications. Licensee shall not interfere in any manner with current or future Licensor or other government public safety, broadband, utility, or other communication systems.

(d) Licensor Interference. Licensor reserves the right, but no corresponding obligation, to maintain and operate its Municipal Facilities in such reasonable manner as will best enable Licensor to fulfill its own service requirements or obligations. However, Licensor agrees to use reasonable efforts such that Licensor and/or any other tenants, licensees, or users of the Public Highway who currently have or in the future take possession of space within the Public Highway will be permitted to install only such equipment that is of the type and frequency which is designed to comply with then existing industry standards regarding potential interference with the then existing Equipment of Licensee.

(e) Remedies. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of forty eight (48) hours following notice to the interfering party via telephone to Licensee's Network Operations Center at (800) 832-6662 or to Licensor at the Fort Collins Utilities System Control and Operation office (970-221-6710), the interfering party shall or shall require any other user of a Municipal Facility to reduce power or cease operations of the interfering equipment until the interference is cured under reasonable commercial standards. The Parties acknowledge there may not be an adequate remedy at law for noncompliance with the provisions of this Section 7.7 and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief.

7.8 Adjacent Property Owner Notices.

(a) Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of customers, Licensee shall give reasonable advance notice to private residential property owners of construction work on or in adjacent rights-of-way, as provided in this section. "Construction work" shall include excavation, boring, assembly, rehabilitation, renovation, remodeling or improvement of any structure or facility in the Public Highway or adjacent to a sidewalk beside the Public Highway, including associated landscaping, parking, equipment or furnishings for such work.

(b) In particular, the following requirements shall apply to nonemergency activity in Public Highways when the activity adjoins residentially zoned property or property shown in the

Larimer County Assessor's Records as "residential," and will not be completed and restored in a period of two weeks or less.

(1) Licensee shall either:

(A) At least seventy-two hours before commencement of any work in the Public Highway, (i) post and maintain a notice that is located at the beginning and end points of the activity, and (ii) deliver notice to each address in the area of the activity and within one hundred seventy-five feet of its boundaries; or

(B) At least fifteen calendar days before commencement of any work in the Public Highway, provide written notice individually to each address in the area of the Public Highway work and within one hundred seventy-five linear feet of its boundaries.

(2) For good cause, Licensor may require Licensee to employ a combination of the notices required by subsection (b)(1) of this section.

(3) The notices required by subsection (b)(1) of this section shall include the name, telephone number, and address of the owner and use permittee, a description of the work to be performed, the duration of the work, and the name, address, and telephone number of a person who will provide information to and receive comments from any member of the public concerning the work. Posted notices shall be in a format and size acceptable to Licensor.

8. **Damage to Licensee's Equipment.** In the event of any damage to Licensee's Equipment, Licensor shall have no liability or responsibility to repair the same unless such damage arose from the negligence or willful misconduct of Licensor, its employees, agents, or contractors; provided however, in such case, Licensor's liability shall be limited to the cost to repair or replace the same, subject to Section 6. Licensor's standard requirements for notification and processing of claims through Licensor's Risk Management department shall also apply.

9. **Title and Ownership.**

9.1. **Title to the Municipal Facility.** Title to the Equipment, exclusive of the Municipal Facility (original or replacement) used for support and poles transferred to Licensor, but including ground mounted equipment, shall remain with Licensee and shall constitute Licensee's personal property and equipment, and not fixtures or improvements attached to the land.

9.2. **No Ownership in Licensor Property.** Neither this Agreement, nor any license issued herein, nor any Permit separately issued for installation of any Equipment, regardless of the payment of any fees and charges, shall create or vest in Licensee any ownership or property rights in any portion or elements of the Municipal Facilities, the underlying real property on which any Licensor-owned poles or any Equipment is located, or any portion of the Public Highway. Additionally, except as otherwise expressly provided herein, Licensee acknowledges that this Agreement does not constitute or create a leasehold interest or right to the benefit of any Licensor property or portion thereof. Nothing contained in this Agreement shall be construed to compel Licensee to construct, retain, extend, place,

or maintain any poles or other facilities for the benefit of Licensor which are not needed for Licensee's own service requirements.

9.3 **"As Is" Condition.** Subject to this Section 9, Licensee accepts the Municipal Facilities identified in any Supplement Site License, or any Replacement Pole, in its "AS IS" condition, without representation or warranty of any kind by Licensor, or any Licensor officer, agent, or employee, and subject to all applicable laws, rules and ordinances governing the use of the Municipal Facility for Licensee's intended purpose.

10. **Maintenance and Repair.** Subject to Section 7.2, Licensor shall maintain and keep the Municipal Facility containing Equipment in accordance with Licensor's ordinary maintenance standards, at its sole cost and expense. Licensee shall keep the Equipment and other improvements by Licensee on the Municipal Facility, if any, in good condition and repair. Licensee shall maintain and keep all proprietary poles containing Equipment in accordance with Licensor's ordinary maintenance standards, at Licensee's sole cost and expense.

11. **Hazardous Substances.** Licensee agrees that Licensee, its contractors, subcontractors and agents, will not use, generate, store, produce, transport or dispose any Hazardous Substance on, under, about or within the area of a Municipal Facility or the Public Highway in which it is located in violation of any applicable federal, state, county, or local law or regulation. Except to the extent of the negligence or intentional misconduct of Licensor, Licensee will pay, indemnify, defend and hold Licensor harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee, or any agent of Licensee, pursuant to this Agreement. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that Licensee shall not be responsible for any environmental condition or issue except to the extent resulting from Licensee's specific activities and responsibilities under this Agreement.

12. **Indemnity and Waiver.**

(a) Licensee shall indemnify and hold the Licensor harmless against any claim of liability or loss from personal injury or property damage to the extent resulting from or arising out of the negligence or willful misconduct of the Licensee, its employees, contractors or agents; provided, however, that Licensee shall have no duty to indemnify or hold Licensor harmless from any claims to the extent that such claims are a result of the negligence or willful misconduct of Licensor. The Licensor will provide the Licensee with reasonably prompt, written notice of any claim covered by this indemnification; provided that any failure of the Licensor to provide any such notice, or to provide it promptly, shall not relieve the Licensee from its indemnification obligation in respect of such claim, except to the extent the Licensee can establish actual prejudice and direct damages as a result thereof. The Licensor will cooperate appropriately with the Licensee in connection with the Licensee's defense of such claim. The Licensee shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of Licensor and without an unconditional release of all claims by each claimant or plaintiff in favor of Licensor.

(b) In consideration for the rights granted under this Agreement, the Licensee waives all claims, demands, causes of action, and rights it may assert against Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Equipment, or any loss or degradation of service resulting from the installation, operation, maintenance, or malfunction of Equipment, except to the extent caused by the negligence or willful misconduct of Licensor.

13. **Insurance Requirements.**

13.1. Licensee's Insurance. Licensee shall procure and maintain insurance in the amounts and form specified in attached Exhibit B. Licensee shall also produce insurance certificates from any sublicensee, including the City and Licensee as additional insured.

13.2. Certificates. If a Certificate of Insurance or Self-Insurance is submitted as verification of coverage by Licensee or a sublicensee, Licensor will reasonably rely upon the Certificate as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, Licensee must forward renewal or replacement Certificates, including certificates verifying sublicensee coverage, to Licensor within fifteen (15) business days after the renewal date containing all necessary insurance provisions. Failure to submit to Licensor and maintain current certificates of insurance shall be deemed abandonment by Licensee and any sublicensees of all privileges under this Agreement and require Licensee to enter into a new agreement with Licensor to access any Municipal Facility.

13.3 Licensor's Insurance. Licensor shall, at its sole cost and expense, maintain general liability insurance with such limits as Licensor may determine to be appropriate from time to time. Nothing herein is intended as a waiver of the provisions and protections of the Colorado Governmental Immunity Act, C.R.S. Sec. 24-10-101 *et seq.*

14. **Assignment/Subletting.**

14.1. This Agreement and each license granted herein is personal to Licensee and for each Municipal Facility. Licensee shall not share with third-parties any space or rights granted hereunder. However, upon prior approval by Licensor of the instrument, Licensee may lease or sublicense all access rights to Municipal Facilities permitted hereunder to a single third-party, provided Licensee remains directly responsible to Licensor for all obligations hereunder and assumes all liability for such third-party's execution of the access rights. Subject to Section 14.3, this Agreement and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of Licensor, which consent shall not be unreasonably withheld, conditioned or delayed. Any Agreement which is assigned or otherwise transferred pursuant to this Section shall be equally subject to all the obligations and privileges of this Agreement including any amendments, which will remain in effect, as if the assigned Agreement was the original Agreement. After assignment, this Agreement, including any amendments, shall be binding on the assignee to the full extent that was binding upon Licensee.

14.2. Any non-permitted transfer or assignment of the right to attach Equipment to a Municipal Facility shall be void and not merely voidable. Licensor may, in its sole discretion and in addition to all other lawful remedies available to Licensor under this Agreement, may collect any fees owed from Licensee all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to transfers or assignment prohibited by this Agreement or to the enforcement of any provisions of this Agreement against a transferee or assignee who did not receive Licensor's consent.

14.3. Notwithstanding anything to the contrary in this Section 14, without any approval or consent of Licensor, this Agreement and/or any Supplement Site License may be sold, assigned or transferred by Licensee to (i) any entity in which Licensee directly or indirectly holds a controlling equity or similar interest; (ii) any entity which directly or indirectly holds a controlling equity or similar interest in Licensee; or (iii) any entity directly or indirectly under common control with Licensee. Licensee may assign this Agreement and/or any Supplement Site License to any entity which acquires all or substantially all of Licensee's assets in the market defined by the FCC in which the Municipal Facility is located due to a merger, acquisition or other business reorganization without approval or consent of Licensor.

15. **Default.**

15.1 Default of Licensee.

a. Licensor shall provide Licensee with a written notice of any violation of this Agreement, and a thirty (30) day period within which Licensee 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 30 days, to initiate a reasonable corrective action plan, including a projected completion date, subject to Licensor's written approval, which approval will not be unreasonably withheld.

b. If Licensee 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 Licensee has failed to initiate a reasonable corrective action plan and to correct the violation within the specified time frame, then Licensor may declare in writing that Licensee is in default.

15.2 Default of Licensor.

a. Licensee shall provide Licensor with a 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, including a projected completion date, subject to Licensee's written approval, which approval will not be unreasonably withheld.

b. 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 Licensee may declare in writing that Licensor is in default.

15.3 **Bankruptcy.** The Parties expressly agree and acknowledge that it is their intent that in the event Licensee 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 "Bankruptcy Code"), for the purposes of proceeding under the Bankruptcy Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Bankruptcy 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 with the exception that Licensor waives any requirement for Licensee to assume or reject this Agreement earlier than prior to confirmation of a plan. Any person or entity, to which Licensee's rights, duties and obligations under this Agreement are assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act to have assumed all the obligations of Licensee arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to 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 Licensor, shall be the exclusive property of Licensor, and shall not constitute property of Licensee or of the estate of Licensee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust for the benefit of Licensor and be promptly paid to Licensor.

16. **Termination/Revocation.** 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 Supplement Site Licenses and the Agreement as a whole, or any Supplement Site License subject to the Default, and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the State of Colorado. 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. If Licensee undertakes any such performance on Licensor's behalf and Licensor does not pay Licensee the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, Licensee may offset the full undisputed amount due against all fees due and owing to Licensor under this Agreement until the full undisputed amount is fully reimbursed to Licensee.

17. **Surrender.** Within sixty (60) days of abandonment of Equipment, the expiration of the Supplement Term of any Supplement Site License, or upon the earlier termination thereof, Licensee shall remove all Equipment attached or ground mounted, at its sole expense, shall repair any damage to the Municipal Facilities or the Public Highway, including landscaping, caused by such removal, and shall restore the Municipal Facilities and impacted adjacent areas to the condition in which they existed prior to the installation of the Equipment (whether attached or

ground mounted), reasonable wear and tear and loss by casualty or other causes beyond Licensee's reasonable control excepted.

18. Notices. Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, shall be in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

Licensee New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Ft. Collins Wireless MLA (CO)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Ft. Collins Wireless MLA (CO)
208 S. Akard Street
Dallas, TX 75202-4206

Licensor City Manager's Office
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522-0580

With copy to: City Attorney's Office
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522-0580

Each party may by notice in writing change its address for the purpose of this Agreement, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder when properly sent and received, refused or returned undelivered. Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.

19. **Miscellaneous.**

19.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all negotiations, understandings or agreements. Any amendments to this Agreement must be in writing and executed by both Parties.

19.2. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.3. Governing Law. This Agreement shall be governed by the laws of the State of Colorado without regard to choice of law rules. In addition, the Parties acknowledge that there are legal constraints imposed upon the Licensor by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States and imposed upon the Licensor by its Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. 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 .

19.4. Exhibits. All Exhibits referred to and attached to this Agreement are incorporated herein by reference.

19.5. Authority to Execute. Any individual executing this Agreement on behalf of or as representative for a corporation or other person, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such party, and this Agreement is binding upon such party in accordance with its terms. Licensor hereby designates, and authorizes, the City Manager to execute all Supplement Site Licenses or Public Highway Access Grants entered into under this Agreement. This designation and authorization may be changed by Licensor upon written notice to Licensee.

19.6. No Waiver. A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

19.7. Force Majeure. With respect to any provisions of this Agreement, the violation or non-compliance of any term of this Agreement which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon a Party, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such Party's reasonable control.

19.8. Limitation of Liability. Except for indemnification pursuant to Sections 11 and 12, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19.9 Obligations Subject to Appropriation. Licensor's obligations under this Agreement in subsequent fiscal years are subject to the annual appropriation of funds sufficient and intended for such purpose by Licensor's City Council in its discretion.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of this ____ day of _____, 2019 (the "Execution Date").

LICENSOR:

City of Fort Collins, a Colorado municipal corporation

By: _____
Darin A. Atteberry, City Manager

LICENSEE:

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy/Assistant City Attorney

EXHIBIT A-A

Form of Supplement Site License

This Supplement (“Supplement”), made this ____ day of _____, 2019 (“Effective Date”) between the City of Fort Collins, a Colorado Municipal Corporation, with an address of City Manager’s Office, P.O. Box 580, Fort Collins, CO 80522-0580, hereinafter designated “Licensor” and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal offices at 575 Morosgo Drive NE, Atlanta, GA 30324, hereinafter designated “Licensee”:

1. Supplement. This is a Supplement Site License as referenced in that certain Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network, between Licensor and Licensee dated _____, 201_ (“Agreement”). All the terms and conditions of the Agreement are incorporated hereby 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 Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensor has received all materials listed on Exhibit A-2 applicable to the supplemental wireless network installation described in this Supplement.

Licensee shall have the right to use the Municipal Facility for Equipment at the designated areas in the Public Highway as further described in Exhibit A-1 attached hereto (the “Licensed Area”); OR

Licensee shall have the right to place its own Equipment and pole at the designated areas in the Public Highway as further described in Exhibit A-1 attached hereto (the “Licensed Area”).

3. Equipment. The Equipment to be installed at the Licensed Area is described in Exhibit A-1 attached hereto.

4. Term/Termination. The term of this Supplement shall be as set forth in Section 3.2 of the Agreement. If Licensee has not installed the Equipment in the Licensed Area within one (1) year from the date of this Supplement, this Supplement will be deemed automatically terminated; provided, however, that such one (1) year period will be extended as reasonably necessary if, despite Licensee’s diligent efforts, there are delays in obtaining necessary permits, licenses, rights-of-way, easements and other rights required to commence installation of the Licensee’s Equipment due to circumstances beyond the Licensee’s reasonable control.

5. Fees. The initial annual License Fee for the term of this Supplement shall be \$270.00 for the use of each Municipal Facility by Licensee, as determined in accordance with the Agreement, [and as adjusted by Section 4.1 of the Agreement.]

6. Commencement Date. The first day of the month following the date Licensee has commenced installation of its Equipment at the Licensed Area.

7. Approvals/Fiber. It is understood and agreed that Licensee's ability to use the Licensed Area is contingent upon its paying all permit and approval application fees and obtaining all the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee use of the Licensed Area as set forth above.

In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain in a satisfactory manner, or maintain any fiber or power connection; or (v) Licensee determines that the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate this Supplement.

Notice of Licensee'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 Licensee, or upon such later date as designated by Licensee. All rentals paid to said termination date shall be retained by Licensor. Upon such termination, this Supplement 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. Otherwise, Licensee shall have no further obligations as to the license payment due to Licensor under the Agreement between the parties.

[Signature page follows]

EXECUTED to be effective as of the date shown above.

LICENSOR:
City of Fort Collins, Colorado

By: _____
Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
Deputy/Assistant City Attorney

LICENSEE:

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____

Exhibits:
Exhibit A-1, Attachment A-1.1
Exhibit A-2

EXHIBIT A-B

FORM OF PUBLIC HIGHWAY USE GRANT

This Public Highway Use Grant, made this _____ day of _____, 20____ (“Effective Date”) between the City of Fort Collins, hereinafter designated “Licensor,” and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal offices at 575 Morosgo Drive NE, Atlanta, GA 30324, hereinafter designated “Licensee”:

1. **Public Highway Use Grant.** This is a Public Highway Use Grant as referenced in that certain Agreement for the Use of Licensor Property in Connection with the Operation of a Wireless Network in connection with the operation of Licensee’s Network, between Licensor and Licensee dated _____, 20__ (the “Agreement”). All 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 Public Highway Use Grant, the terms of this Public Highway Use Grant shall govern. Capitalized terms used in this Public Highway Use Grant shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Project Description and Locations.** As described herein, Licensee shall have the right to occupy the Public Highway by attaching Equipment to an asset owned by a third party at the designated areas further described in Attachment 1, Table 1 attached hereto (the “Licensed Area”).
3. **Equipment.** The Equipment to be installed at the Licensed Area is described in Attachment 1, Table 2 attached hereto.
4. **Term.** The term of this Public Highway Use Grant shall be as set forth in Section 3.2 of the Agreement.
5. **Fees.** There is no fee for this Public Highway Use Grant.
6. **Commencement Date.** The commencement date of this Public Highway Use Grant is the Effective Date.
7. **Approvals.** It is understood and agreed the Licensee’s ability to use the Licensed Area 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 Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Licensee determines one or more licensed Sites in the Licensed Area is no longer technically compatible for its use, Licensee shall have the right to terminate all or part of this Public Highway Use Grant. Notice of Licensee’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 Licensee, or upon such later date as designated by Licensee. Upon such termination, all or part of this Public Highway Use Grant, 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.

EXECUTED to be effective as of the date shown above.

LICENSOR:
City of Fort Collins, Colorado

By: _____
Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

BY: _____
Deputy/Assistant City Attorney

LICENSEE:
New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____

Attachments:
Attachment 1

Table 2

| SITE ID NO. | POLE ALTERATION | ATTACHMENT HEIGHT | TYPE OF EQUIPMENT ATTACHED |
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**Attachment A-1.1
to EXHIBIT A-1**

SITE DRAWINGS

EXHIBIT A-2

SUPPLEMENTAL SITE LICENSE REQUEST SUBMITTAL MATERIALS

Licensee shall provide the following materials as applicable for consideration by Licensor in reviewing the Supplement Site License request:

- Electronic shape file containing plot plan, engineering design, and specifications for installation of utilities, 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.
 - The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements.
 - Licensee shall submit photographs and/or photographic simulations of the proposed Wireless Site and specific equipment proposed for attachment along with plot plan and drawings.
- For Municipal Facilities, include documentation from the City verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement to accommodate attachment of the Equipment. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.
- For Replacement or new proprietary Pole installations, include documentation verifying the pole location is in the Public Highway and is eligible for installation. Include list of abutting property owners. If the proposed installation includes a new structure, provide design and specification drawings for the structure by use of a Google Earth (or equivalent means) aerial image of the City block on which the structure will be placed, showing the proximity of proposed structure to intersection of property lines, trees, fire stations/emergency service facilities, subject to availability of such information.
- If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specifications drawings.
- The number, size, type and proximity to the facilities of all communications conduit(s) and cables to be installed.
- Description of the utility services required to support the facilities to be installed.
- 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. For the Municipal Facilities, provide insurance information as required by Exhibit B of the Agreement.

EXHIBIT B

LICENSEE'S INSURANCE REQUIREMENTS

1. General.

A. Prior to performing work under this Agreement, Licensee shall furnish Licensor a certificate of insurance on a standard insurance industry ACORD form. The insurance coverage required must be issued by an insurance company eligible to transact business in the State of Colorado, possessing a current A.M. Best, Inc. rating of A-VII or better.

B. Licensee shall procure and maintain and shall require any of its contractors to procure and maintain, until all of their obligations have been discharged, the insurances set forth below.

C. The insurance requirements set forth in no way limit the indemnity covenants contained in this Agreement.

D. Licensor in no way warrants that the insurance limits contained in this Agreement are sufficient to protect Licensee from liabilities that might arise out of the performance of this Agreement by Licensee and its contractors, and Licensee is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve Licensee from, nor will it be considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2. Scope and Limits of Insurance. Licensee shall provide coverage with limits of liability stated below.

A. Commercial General Liability-Occurrence Form. Licensee must maintain Commercial General Liability insurance, as per form ISO CG 00 01 or equivalent, with a limit of \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 general aggregate including premises-operations, products and completed operations, independent contractor, contractual liability, personal injury and advertising injury.

B. Commercial Automobile Liability. Licensee must maintain Commercial Automobile Liability insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and property damage covering all of Licensee owned, hired, and/or non-owned vehicles assigned to or used in the performance of Licensee's work or activities under this Agreement.

C. Workers Compensation and Employers Liability Insurance. Licensee must maintain Workers Compensation insurance in compliance with the statutory requirements of the

state of operation and Employer's Liability with a limit of \$1,000,000 for each accident; \$1,000,000 disease for each employee; \$1,000,000 disease-policy limit.

D. Builders' Risk/Installation Floater Insurance. Builders' Risk/Installation Floater Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or, (ii) until no person or entity, other than Licensor, has an insurable interest in the property required to be covered.

(a) The Builders' Risk/Installation Floater insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by Licensor.

(b) The Builders Risk/Installation Floater insurance must include as loss payees Licensor and all tiers of contractors and others with an insurable interest in the Work

(c) The Licensee is responsible for payment of all deductibles under the Builders' Risk/Installation Floater insurance policy.

3. Additional Policy Provisions Required.

A. Miscellaneous Provisions.

(1) Licensee's insurance coverage must be primary insurance with respect to Licensor, its officers, officials, and employees. Any insurance or self-insurance maintained by Licensor, its officers, officials, and employees shall be in excess of the coverage provided by Licensee and must not contribute to it.

(2) Licensee's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) The policies must contain a severability of interest clause and waiver of subrogation against Licensor, its officers, officials, and employees, for losses arising from work performed by Licensee for Licensor.

(4) Licensee is required to maintain Commercial General Liability insurance for so long as Licensee's Equipment is located in or on Licensor's Public Highway. Licensee must submit a Certificate of Insurance evidencing Commercial General Liability insurance at the beginning of this period and anytime during this period that such insurance is renewed or modified, evidencing the insurance requirement and including the required Additional Insureds set forth herein.

(5) If a Certificate of Insurance is submitted as verification of coverage, Licensor will reasonably rely upon the Certificate of Insurance as evidence of coverage, but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

(6) Upon receipt of notice from its insurer, Licensee shall use its best effort to provide the Licensor with thirty (30) days prior written notice of cancellation or nonrenewal of any required coverage that is not replaced. Such notice shall be sent directly to City Manager's Office, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522-0580.

B. Licensor as Additional Insured. The above-referenced policies shall, excluding workers compensation and employer's liability, expressly include the Licensor, its officers, officials, and employees as an additional insured as their interest may appear under this Agreement with respect to liability arising out of activities performed by Licensee.

4. Licensee Self-Insurance.

Notwithstanding the foregoing, Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly and no later than thirty (30) days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

EXHIBIT C

TECHNICAL REQUIREMENTS

1. This Exhibit C sets forth additional technical requirements applicable to all Wireless Sites and attachments permitted under a Supplement Site License under the Agreement between Licensor and Licensee. Terms not defined herein shall have the definitions set forth in the Agreement to which this Exhibit C is attached.

2. Except as allowed by Law, Licensee shall not (i) unless otherwise agreed to by the Parties in a Supplement Site License and (ii) unless the Licensee obtains any additional, required permitting and land use approval in accordance with applicable Law, increase the height of a pole in the ROW in excess of 45 feet. Licensor shall weigh any request by Licensee for an increase in height over 45 feet in a Supplemental Site License in light of Licensor's historic preservation policies, aesthetic considerations, pedestrian, disabled person and/or bicyclist access to sidewalks, public safety concerns, technical installation conflicts, and compliance with the City Code and Land Use Code.

Exceptions to this maximum height will be considered where proposed structures collocate and/or combine multiple uses (antennas and street lighting, or 4/5G equipment, for example), where no other Municipal Facility exists within two hundred feet (200') radially of a proposed location, or are within areas where adjacent utility or street light pole heights are consistently greater.

3. Nothing in this Agreement shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or a similar high-powered cellular facility in the Public Highway, nor the installation of macro wireless towers or poles intended to serve macro facilities, except pursuant to federal, state and local laws.

4. Ground-mounted components of Wireless Sites shall be installed within the footprint of an area of no more than thirty-six (36) square feet.

EXHIBIT D

OPERATIONAL AND DESIGN STANDARDS

A. Operational Standards.

- (a) Federal Requirements. All Small Cell antennas and other wireless communication transmission equipment utilizing small cell technology installed pursuant to this Agreement and all associated Supplement Site Licenses (“Equipment”) 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, Licensee shall bring such Equipment into compliance with such revised standards and regulations within the 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 Equipment from any site under this Agreement at Licensee’s expense.
- (b) Radio Frequency Standards. Subject to Sec. 7.7 of the Agreement, all Equipment shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards for Equipment are made to Licensor, Licensor may request Licensee provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the Equipment may not be in compliance, Licensor may request, and Licensee 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 facility does not meet federal standards, Licensor may require corrective action within a reasonable period, and if not corrected, may require removal of the Equipment 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 Licensee 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 Fort Collins Municipal Code.

B. Design Standards.

- (a) In addition to all standards of Licensee’s Permit(s) under the Code, the requirements set forth in this Exhibit shall apply to the location and design of all Equipment governed by this Agreement; provided, however, Licensor may waive any Permit requirement and/or any of these requirements if Licensor determines the goals of this Exhibit are better served thereby without any notice requirements or public hearing. To that end, Equipment shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.
 - (1) General Principals.
 - a. All Equipment covered by this Agreement shall be architecturally compatible with the surrounding area as feasible;

- b. All electrical, communication, and other wiring to Equipment 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 Equipment and any Replacement Pole should be minimized and conform to the standard form factor of Licensor Municipal Facility to the maximum extent practicable;
 - d. Equipment 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 reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor Municipal Facility to the maximum extent practicable; and
 - f. Equipment shall be designed to have minimal impact on the surrounding area of the proposed ingress and egress, if any.
- (2) Camouflage/Concealment. Equipment shall, to the maximum extent feasible, match the appearance and design of existing Licensor Municipal Facilities adjacent to the Wireless Site, as much as possible, and when not technically practicable that Equipment 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 Equipment to the surrounding natural setting and built environment. Design, materials and colors of Equipment not identical to existing Licensor Municipal Facilities 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 sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where Equipment is located in areas of high visibility, they shall (where possible) be designed to minimize their profile.
 - b. Equipment, including antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).
- (3) Any antenna installed on a structure other than a Municipal Facility (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 to make the antenna and related facilities as visually unobtrusive as possible.
- (4) Traffic and Public Highway uses. No Equipment or structure installed pursuant to this Agreement may alter vehicular circulation or parking within the Public Highway or impede vehicular, bicycle, or pedestrian access or visibility along the Public Highway as required by law. All structures must comply with the Americans With Disabilities Act and every applicable local, state, and federal law and regulation. No structure may be located or maintained in a manner that causes unreasonable interference. “Unreasonable

interference” means any use of the Public Highway that disrupts or interferes with its use by Licensor, the general public, or other person authorized to use or be present upon the Public Highway, when there exists an alternative that would result in less disruption or interference, irrespective of the cost to Licensee associated with such alternative installation or attachment method. “Unreasonable interference” includes any use of the Public Highway that disrupts vehicular or pedestrian traffic (including traffic view triangles), any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare (including creation of overhead hazards falling into vehicular or pedestrian traffic on driving or walking surfaces).

- (5) **Setbacks and Separation.** The following minimum setbacks and separation requirements shall apply to all Equipment installed pursuant to this Agreement; provided, however, Licensor may reduce standard setbacks and separation requirements if Licensee demonstrates the goals of this Exhibit can be better met by reduced setback and separation requirements that protect the public health and safety, view corridors, or minimize adverse impact or effectively prohibit the deployment of wireless services and shall be able to do so without a public hearing, though may require Licensee to provide public notice as set forth in section 7.8 of the Master License. All Equipment installation sites shall be at least two hundred (200) feet from any support structure greater than sixty (60) feet in height to which an existing radio antenna, or aerial telecommunication equipment is attached, measured from the top of the proposed Equipment support structure to the height of the existing equipment.

EXHIBIT E

ATTACHMENTS TO TRAFFIC SIGNAL FACILITIES

Licensee shall not be permitted to attach to any traffic signal facility, including any signal pole or above-ground element thereof, when another permitted attachment structure under this Agreement exists within two hundred feet (200') radially of an identified traffic signal facility. In no event shall Licensee be permitted to attach Equipment to any signal pole mast arm. To the extent attachment to a traffic signal facility is permitted, Licensee shall satisfy requirements below.

Traffic Signal Pole Requirements

Signal poles already supporting Police equipment are not eligible for Licensee equipment placement. Equipment placed on signal poles may be required to be relocated at any time if the subject signal pole is needed for placement of law enforcement equipment.

Signal poles are engineered structures designed to specific loading criteria and required AASHTO standards. Modifications to the loading due to the Equipment will require an engineering analysis stamped by a Colorado licensed professional engineer, provided at Licensee's expense.

All cabling must be external to the signal pole and shielded per Fort Collins Traffic Engineering standards to eliminate interference with existing signal cables and conductors.

All signal pole installations shall be designed and installed to contain separate power fuses to prevent the pole from becoming electrified due to an Equipment fault.

Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required by Fort Collins Traffic Engineering standards and case by case review.

Analysis must be provided to Licensor to show the proposed equipment will not interfere with Licensor's or any government public safety wireless network operating in the 900 MHz and 2.4 GHz and 5.8 GHz frequencies.

Licensee must be accompanied by Fort Collins Traffic Engineering staff at all times during installations on signal poles and involved Licensee 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 local traffic signal infrastructure.

Equipment installation or servicing on signal poles shall be coordinated with the Fort Collins Traffic Operations and Engineering groups at least three (3) business days in advance, or such shorter period as Traffic Operations and Engineering may require of City crews working on such structures.