MEMORANDUM

To: Board of County Commissioners
Planning Commissioners

From: Lesli Ellis, AICP CEP, Community Development Director
Frank Haug, Assistant County Attorney II

Date: August 14, 2019

Re: Wireless Communications Facilities Regulations Work Session on August 21, 2019

Purpose of the Work Session
At the June 19, 2019 hearing, the Planning Commission tabled the Wireless Communications Facilities (WCFs) regulations. The commission requested staff to schedule a joint work session with the Board of County Commissioners and to work with a consultant to clarify local authority for the wireless land use regulations, address relevant legal cases, and address other comments received from community members. At the work session, staff and consultant will present the draft regulations and changes incorporated since June and respond to requests and questions.

Background
Since earlier this year, the county has been working on revising the existing Commercial Mobile Radio Service (CMRS) Facility Standards in Section 16 of the Land Use Code, which have not been updated in over ten years. The update to the land use regulations (which will repeal and replace the current chapter) will:

- Carry forward the original intent of allowing WCFs in the county to meet our growing communication needs while minimizing adverse impacts,
- Bring local standards into compliance with federal and state requirements (including timing of review and to allow and provide standards for small cell facilities in rights-of-way),
- Address new technology and its implications for land use, and
- Improve design and compatibility of such facilities and notification during the review process.

Public Process to Develop Standards
During this project, staff has conducted prior work sessions to review preliminary concepts and drafts of the standards with:

- The Board of County Commissioners (April 15, 2019),
- The Planning Commission (April 17, 2019)
- A joint work session (May 8, 2019).

Additionally, staff conducted a public open house on May 8, 2019 to gather community feedback and answer questions as well as hosted an online questionnaire from May 8 to May 22, 2109. Approximately 20 people attended the open house and 22 people responded online. Staff shared the input from those events with the boards in previous packets along with additional written correspondence received from community members prior to the June hearing date.

Over the past few months, staff has had assistance from attorneys Gabrielle Daley and Ken Fellman stemming from the county's membership in the nonprofit Colorado Communications and Utility Alliance (CCUA) which provided access to Mr. Fellman for legal advice related to wireless facilities.[1] Since the hearing was tabled in June, Mr. Fellman and Ms. Daley have reviewed written public input provided by staff and the June draft regulations and will be prepared to clarify local authority and the current legal framework around wireless facilities and assist with questions. Staff and consultant have been researching other community examples and will discuss them.

Current Legal/Regulatory Framework for the Proposed Regulations
As noted above, part of the reason for updating the regulations is because they are out of compliance with state and federal requirements, as described below.

In 2014, the Federal Communications Commission (FCC) adopted rules under a 2012 federal statute. The statute and the FCC rules require that any existing wireless facility seeking to be modified, that qualifies as an "eligible facilities request" ***must*** get regulatory approval from the County, and if the County does not approve the application within 60 days it is "deemed granted" by federal law. The FCC rules adopt multiple definitions of key terms related to wireless facilities, and the draft code amendments incorporate these new definitions and rules.

In 2018, Colorado HB 17-1193, the "Small Cell Law" made small cell facilities a use by right, subject to local police powers, and it applies the state "shot clock" for wireless facilities, which allows for more review time than the federal shot clock standards.

Additionally, in September 2018, the Federal Communications Commission (FCC) issued a small cell order which is being appealed in federal court. Hundreds of local governments nationally are parties to the appeal, including the CCUA, of which the county is a member. There are some conflicts between the FCC rule and state law, including the shot clock provisions, definitions for small cell facilities, fees that can be charged, and the scope of local police power, which Mr. Fellman can explain further at the session.

There is also much interest and community comment on health-related issues and radio frequency (RF) emissions related to wireless facilities. The longstanding 1996 Telecommunications Act, 47 USC 332(c)(7)(b)(iv) restricts any state or local regulation of wireless facilities based on environmental (including health) effects of radio frequency emission, preempting local authority. The Federal Communications Commission (FCC) has sole federal

[1] CCUA is a government trade association that represents and advocates for its member municipalities, counties, school districts and regional entities in a wide variety of telecom, cable, broadband and utility issues. It works closely with CCI and CML and is funded by member dues and an annual conference. CCUA is also the Colorado chapter of the National Association of Telecommunications Officers and Advisors (NATOA).

authority to set health emission standards, and case law has supported the preemption. A small number of communities in the United States appear to have implemented regulations that contradict that law, creating restrictions that may violate federal law and be subject to legal challenge. Mr. Fellman will be able to further discuss the legal issues during the work session as well as options the county may be able to pursue. Locally, cities and counties can require telecommunication operators to certify that sites will comply with FCC standards, which is included in the draft regulations. Additionally, the county could undertake testing, but authority allowing the county to require an applicant to conduct post-installation testing is less clear.

To further complicate matters, there are gaps in the research about health effects. The FCC has had a proceeding open for the past six-plus years to update their regulations on RF emissions, and just last week announced that in an upcoming meeting they will update the regulations. However, the FCC also indicated that the updated rules will not make any findings that 5G emissions should be subject to any rules that differ from the current emissions rules related to other wireless facilities RF emissions. Mr. Fellman may have a more current update on the FCC's proposed actions by the time of our meeting.

Technology Changes and Questions about 5G

The technology around wireless facilities is fast-changing, and that creates questions and confusion about the differences between 4G, 5G, and small cell technology. To be clear, the county's proposed regulations are not technology-specific (i.e., 4G versus 5G); they address the type of base station or tower and facilities that will be used to deploy the various wireless technologies. Currently, telecommunication providers are not proposing 5G in unincorporated Larimer County (nor even in denser cities in the county such as Fort Collins). Some cities, including Denver, are included in the plans for some providers' initial 5G roll out over the next couple of years. According to Andrew Boedigheimer-Thiessen, Institute for Telecom Sciences, in a recent panel discussion, 5G application first will occur in dense urban areas or buildings that host large crowds, such as stadiums, because of its cost and need for line-of-sight locating.

Overview of Proposed Regulations and What Changed in the Draft Since June

The proposed regulations are in **Attachment A,** and staff has made modifications since the June draft to provide better organization, clarification, editorial corrections, and a few additional provisions. A summary of major changes is noted in **Attachment B**.

<u>Standards – What's New</u>

As they did in June, the proposed standards address priority for collocating facilities, include compatibility and concealing standards, and address a number of issues for towers and alternative tower structures such as height, setbacks from residential properties, new camouflage/concealment language to achieve design in context with surroundings, as well as addressing lighting, noise and landscaping.

The City of Fort Collins provided comments and suggest that Growth Management Areas could be treated differently because of proximity to denser residential areas, such as: requiring concealed towers, limiting height to 90 feet, not exceeding surrounding environment and structures by 10-15 feet, and including greater landscaping and screening requirements. These can be topics for discussion at the work session.

Additionally, the proposed standards now provide guidance on small cell facilities in the right of way, which the old standards do not address. The standards address spacing, minimizing

"clutter" and obstructions in the right of way, heights, and other topics, with more questions noted below for further discussion.

Proposed Review Procedures

The review procedures encourage smaller, more compatible facilities partly by having lengthier reviews with public hearings for the larger and potentially less compatible types of facilities, depending on the zoning districts. The regulations generally prohibit new towers in residentially zoned areas.

Table 16.B – Review Procedures and Requirements for Different Facility Types

Procedure	Applies to	Notice Given	Referral	Type of Decision	Appeal to	Time-frame
Site Plan (SP) – Sec. 6.0 and 6.1 of Code	• See Table 16 A for zoning districts and tower types • Eligible facilities requests	• notice of administrative decision sent to abutting property owners following administrative decision	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Administrative decision	BCC	60 days
Public Site Plan (PSP) – Sec. 6.2 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Administrative decision but may be approved by Board of County Commissioners.	BCC	90 days
Minor Special Review (MS) – Sec. 4.5 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	BCC approval including a public hearing		90 days
Special Review (SR) – Sec. 4.5 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Two public hearings: PC recommendation and BCC approval		150 days

Shot Clock Requirements

The proposed regulations also address state legislation pertaining to timely review of wireless facilities, which is referred to as the "shot clock." Provisions for "tolling the shot clock" (i.e., pausing or stopping the review) for incomplete applications are also included. These review time frames have been set by the state statute, but the county is able to stop the clock for incomplete applications, if it provides notice of the deficiency to the applicant within a specific timeframe. Furthermore, the proposed regulations incorporate the 2014 FCC regulations that require "eligible facilities requests" for modifications on existing wireless sites to be processed even more quickly. The proposed regulations will give the county staff the information we need at the time of application to quickly determine whether an application qualifies as an eligible facilities request, which, per federal law, must be approved.

Shot clock requirements for final action on complete applications are as follows:

- 150 days for new structures.
- 90 days for collocated wireless communication facilities that do not qualify as an eligible facilities request.
- 90 days for small cell facilities (collocated or new).

- 60 days for eligible facilities requests.

Note that the shot clock under state law is somewhat different than the shot clocks that the FCC found to be reasonable in its 2018 rules (which again, are currently being challenged in court). As Mr. Fellman can explain, many Colorado communities have decided to ensure that their regulations are consistent with both state and federal law, but when they diverge, such as with shot clocks, the state law is followed. To date we are not aware of any challenges to these decisions to follow the state law.

Fees

Fees must be set for these applications based on the type of review process. In addition to the existing application types, Site Plan, Public Site Plan, Minor Special Review, and Special Review, an additional fee for the new category of Eligible Facilities Requests must be set. At the Board of County Commissioners hearing proposed for October, staff will present an updated fee schedule, which will include fees for each of the process types identified in the regulations.

Master License Agreement (MLA)

the 2017 state statute requires local governments to permit small cell facilities in public rights-of-way, this use is subject to local police power, so each company will need specific authorization for these installations. Staff is proposing that the county follow the process that is being used by many other local governments in Colorado, which is to grant a master license agreement (MLA), which generally authorizes the use of the rights-of-way, and contains provisions that the county will want to cover every individual site. These include matters such as insurance, indemnification, compliance with local laws, relocation obligations, and the county's preferences of how sites should be located. This identification of preferences would include the preference to locate small cells on existing or replacement vertical infrastructure already in the streets, and to only deploy new, stand-alone small cell sites if other options are not available. The MLA would also have an exhibit which would be the agreed upon individual site license form, to be used when a company applies for a specific site. These site licenses would include drawings and related information ensuring compatibility with the county's design standards. Each specific location would still be individually evaluated and given a right-of-way permit. An MLA template is attached (**Attachment C**) as an example of the kind of contents such an agreement includes. The draft will need to be updated following any final revisions to Chapter 16 in the Land Use Code. To date, no telecommunication providers have entered an agreement with the county using such a template.

Options for Discussion at Work Session
Staff has been exploring other possible additions to the proposed regulations based on comments and questions received. Questions for Planning Commission and Board of County Commissioners to discuss at the work session may include:

1. **Would you like to make any further changes to the draft regulations, for instance:**

    a. Operational requirements.
        i. Should the county provide a map of existing facilities to inform public about location of small cell facilities. (not something for the regulations but may address public comments and concerns)?
        ii. Should county consider periodic monitoring of radio frequency at wireless sites to ensure compliance with FCC standards?

    b. Location and design standards. Should the county:
        i. Further explore setback requirements?
        ii. Further review heights in various zoning districts?
        iii. Treat Growth Management Areas differently for certain standards as suggested by Fort Collins (i.e., heights, concealed towers, landscaping)?
        iv. Modify spacing or location of small cell facilities or locational preferences, such as a preference for arterials and avoidance of locating facilities on local residential streets – note there are federal limitations?
        v. Include additional security measures such as function of cameras on towers?
        vi. Add any other camouflage requirements or other concealment mechanisms?
        vii. Add fire protection measures for wireless facilities, for instance in the wildfire hazard area? (note: seeking input from fire districts)

    c. Review procedures – Should there be any further changes?

    d. Application and submittal requirements - Should the county request any additional information from applicants?

    e. Are there clarifications to any other sections, or is there input regarding Master License Agreement

2. **Do you have all the information you need to be ready to move toward the Planning Commission hearing for the draft regulations on Sept. 11?**

ATTACHMENTS:
Attachment A: Revised Ch. 16 – Wireless Communication Facility Regulations
Attachment B: Summary of Changes Since June
Attachment C: Sample Master License Agreement

Attachment A

16.0 Wireless Communications Facilities

16.1.1 - Intent and Purpose. It is the intent and purpose of this chapter of the county's Land Use Code to establish a regulatory framework so that Wireless Communications Facilities (WCFs) may be constructed or located within Larimer County in consideration of the public health, safety, and general welfare and to minimize adverse impacts to the county.

A. **Purpose.** To accommodate the communication needs of residents and businesses while protecting the public, health, safety, and general welfare of the community, the county finds that these regulations are necessary to:

1. Provide for the managed development, installation, maintenance, modification, and removal of wireless communications infrastructure in the county with the fewest number of WCFs to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
2. Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to camouflage design techniques and undergrounding of the equipment associated with WCFs where technically feasible;
3. Encourage the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs;
4. Encourage the use of wall-mounted panel antennas;
5. Encourage roof-mounted antennas only when wall-mounted antennas will not provide adequate service or are not otherwise feasible;
6. Encourage the location of towers in non-residential areas in a manner that minimizes the total number of towers needed throughout the community;
7. Encourage the collocation of WCFs on new and existing sites;
8. Encourage owners and users of antennas and towers to locate them, to the extent possible, in areas where the adverse impact to the community is minimized;
9. Enhance the ability of wireless communications service providers to provide such services to the community quickly, effectively, and efficiently; and
10. Effectively manage WCFs in the right-of-way.

B. **Applicability.**

1. The requirements set forth in this chapter shall apply to all WCF applications for base stations, alternative tower structures, towers, micro cells, macro cell facilities and small cell facilities as defined in this chapter.
2. This chapter shall not preempt underlying zoning regulations unless explicitly stated in this chapter or as explicitly stated in federal and/or state law.
3. The requirements set forth in this chapter shall not apply to:
   a. Amateur radio antenna, over-the-air receiving device (OTARD), as those devices are defined in applicable law as of the date of these provisions, and residential television reception/antenna towers, except as provided in Section 16.1.1.B.3.c below.
   b. Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to the effective date of these new wireless regulations, shall not be required to meet the requirements of this chapter of the Code, other than the requirements of the operational standards section. Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of the operational standards Section. Notwithstanding the foregoing, any modifications qualifying as an eligible facilities request shall be evaluated under this Code.
   c. Miscellaneous antennas. Antennas used for reception of television, multi-

channel video programming and radio such as OTARD antennas, television broadcast band antennas, and broadcast radio antennas, provided that any requirements related to accessory uses contained in this Code and the requirement that the height be no more than the distance from the base of the structure where it meets the ground to the property line are met. The director has the authority to approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the county, modifications are necessary to comply with federal law.

d. A WCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of public necessity by the county.

e. A temporary WCF installed for providing coverage of a special event such as a news coverage or sporting event, must be included in the special event permit application.

C. **Permit Required.**

1. No person, firm or corporation shall construct, establish, build or cause to be constructed, established or built a WCF without first having obtained land use approvals as required in this chapter, a lease (as applicable), pole attachment agreement or license (as applicable), and a building permit for this purpose.
2. All WCF permits shall expire and be of no further force and effect 180 days following the date of county approval unless, pursuant to the discretion of the director, prior to the date of expiration: (1) Construction has been diligently pursued towards completion of the project, or (2) Approval has been extended in accordance with Subsection 3 below.
3. Prior to the expiration of a WCF permit, one (1) 180-day extension of the permit may be authorized by the director upon a written request by the applicant. An extension may be granted if a review of the permit shows that no major changes in the county's development or zoning regulations or in the development pattern of the surrounding properties has occurred, as determined by the director. If a WCF permit expires, no further development of the facility may occur until a new permit application is submitted, reviewed and approved in accordance with this Code, subject to all application and processing fees.

D. **Severability.** If any section, clause, provision, or portion of these regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of the regulations in this chapter shall not be affected thereby and is hereby declared to be necessary for the public health, safety, and welfare.

16.1.2 - Where Allowed.

Subject to the standards of this Section, the WCF classifications that are permitted in each zoning district are set out in Table 16.A below. See Section 16.1.6 – Review Procedures and Table 16.B for review processes. WCFs located in the right-of-way are permitted through a master license agreement and right-of-way permit, subject to the design standards set forth in Section16.1.4, WCF in the right-of-way.

Table 16.A: Zoning Districts Where WCFs are Allowed

ZONING DISTRICT	Attached Facility on Existing Structure (including Eligible Facilities)	Small Cell Facility	Alternative Tower Structure (concealed)	Tower (non-concealed)
E and E-1 Estate RE and RE-1 Rural Estate R, R-1, and R-2 Residential M and M-1 Multiple Family	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **PSP** ≤ 60 feet high	Not permitted
FA and FA-1 Farming FO and FO-1 Forestry	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **PSP** ≤ 60 feet high	**PSP** ≤ 60 feet high **MS** ≤ 80 feet high
A Accommodations T Tourist	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **PSP** ≤ 60 feet high	**PSP** ≤ 60 feet high **MS** ≤ 80 feet high
B Business RFLB Red Feather Lakes Business	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **PSP** ≤ 80 feet high	**PSP** ≤ 60 feet high **MS** ≤ 100 feet high
C – Commercial I – Industrial I-1 – Heavy Industrial PD – Planned Development	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **PSP** ≤ 80 feet high	**PSP** ≤ 60 feet high **MS** ≤ 120 feet high
O-Open	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet high **MS** ≤ 100 feet high	**PSP** ≤ 60 feet high **MS** ≤ 120 feet high **SR** ≤ 160 feet high
AP – Airport	**SP**	**SP** ≤ 40 feet high	**SP** ≤ 40 feet	**PSP** ≤ 40 feet
Public right-of-way	Master License Agreement (MLA) & right-of-way permit	MLA & right-of-way permit	Not permitted	Not permitted
KEY: SP = Site Plan PSP = Public Site Plan MS = Minor Special Review SR = Special Review				

16.1.3 - Operational Standards for All WCFs.

A. **Federal Requirements.** All WCFs shall meet the current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) and any other agency of the federal government with the authority to regulate WCFs. If such standards and regulations are changed, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency.

B. **Permission to Use Right-of-Way.** For WCFs in the right-of-way, the applicant shall execute a license agreement with the county. In this, the county is able to grant a non-exclusive license to the applicant to use the right-of-way. Attachment of WCFs on an existing traffic signal, street light pole, or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner.

C. **Operation and Maintenance**. To ensure the structural integrity of WCFs, the owner of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes in effect at the time of original installation or modification. If upon inspection at any time, the county concludes that a WCF fails to comply with such codes and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the county's chief building official may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the county may remove such WCF at the owner's expense.

D. **Abandonment and Removal.** If a WCF has not been in use for a period of six (6) months, the owner of the WCF shall notify the county of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The county, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF shall remove the same within sixty (60) days of receipt of written notice from the county. If such WCF is not removed within said sixty (60) days, the county may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the county, in its sole discretion, shall not approve any new WCF application until the applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the county. Notwithstanding the foregoing, nothing in this subsection shall limit an applicant for applying for an eligible facilities request on an existing eligible support structure.

E. **Hazardous Materials.** No hazardous materials shall be permitted in association with WCFs, except those necessary for the operations of the WCF and only in accordance with all applicable laws governing such materials.

F. **Collocation.** No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.

16.1.4 - Design Standards.

A. **Minimum Setbacks for all Towers from Property Lines**. The minimum setback from property lines for towers not located in the right-of-way shall be as follows:

a. adjacent to properties, buildings, or structures with residential uses, a 2:1 setback to tower height applies (setback = 200% of the tower height);

b. adjacent to any right-of-way a 1:1 setback to tower height applies (setback = 100% of the tower height);

c. for all other property adjacencies, the setback shall be at least 30% of tower height.

2. An alternative setback, approved by the director or board of county commissioners, for an alternative tower structure where the facility replaces or proposes an accessory structure to an established principal use, to include, but not limited to, signs, light poles, and flagpoles, where it is evidenced that the siting and location of the alternative tower structure allows for camouflage and concealment design techniques to a greater extent than would be achieved by application of the principal structure setback.

3. All ground-based equipment shall meet the building and structure setbacks in the zoning district, unless an alternative setback is established for an alternative tower structure pursuant to this section.

B. **Design Standards for all WCFs.** The following design and landscaping standards apply to all WCFs governed by this chapter provided, however, that the director may waive any of these requirements if they determine that the goals of this section are better served thereby. To that end, WCFs shall be designed and located to minimize the impact on the surrounding area and to maintain the character and appearance of the county, consistent with other provisions of this Code.

1. **Camouflage, Concealment, or Camouflage Design Techniques.** All WCFs and any transmission equipment shall, to the extent technically feasible, use camouflage design techniques and not be readily apparent. Techniques may include, but not limited to the use of materials, colors, textures, screening, undergrounding, or other design options that will blend the WCF to the surrounding natural setting and/or built environment. Design, materials and colors of WCFs shall be compatible with the surrounding environment. Designs shall be compatible with structures and vegetation on sites located in the right-of-way and on adjacent parcels.
   a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures and/or natural or community features). Should the director determine that WCFs are located in areas of high visibility, they shall (where possible) be designed (including but not limited to camouflaged, placed underground, depressed, or located behind earth berms) to minimize their profile at the request of the director.
   b. The camouflage design may include the use of alternative tower structures should the director determine that such design meets the intent of this section and the community is better served thereby.
   c. All WCFs, shall be constructed out of or finished with non-reflective materials (visible exterior surfaces only).
   d. Maximum height for WCFs shall be based on limits set forth in Table 16.A above, except if they are structures, they shall comply with building height limits (e.g., for a silo).
2. **Collocation.** WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF unless the county approves an alternative design to the extent reasonably feasible based upon construction, engineering and design standards. Collocation shall not be required when it would materially compromise the camouflage design intent of the WCF. Upon request by the director, the owner or operator shall provide evidence explaining why collocation is not possible at a particular facility or site.
3. **Lighting.** WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority, or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, the county may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible to minimize the amount of glare and light falling onto nearby properties, particularly residences.
4. **Noise.** Noise generated on the site must not exceed the levels permitted by the county noise ordinance, except that a WCF owner or operator shall be permitted to exceed

noise standards for a reasonable period of time during repairs, not to exceed two hours without prior authorization from the county.

5. **Landscaping and Fencing Requirements.**
   a. WCFs shall be sited in a manner that does not reduce landscaping required by the Land Use Code for the other principal uses on the property.
   b. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as WCFs sited on large lots with an abundance of vegetation, including trees, natural growth around the site perimeter may be sufficient to buffer.
   c. No trees larger than 4 inches in diameter measured at 4 ½ feet high on the tree may be removed, unless authorized by the director. To obtain such authorization the applicant shall show that tree removal is necessary, the applicant's plan minimizes the number of trees to be removed, and any trees removed are replaced at a ratio of 2 to 1. The county shall designate a tree caliper requirement for all replacement trees. Additional landscaping required by the county will be maintained at the expense of the owner of the WCF.
   d. Landscaping for concealed towers shall be compatible with the type of camouflage or concealment technique.
   e. In Growth Management Areas, excluding small cell facilities deployed in the right-of-way, all ground-based equipment must be screened by a solid fence or screen wall six (6) feet in height as measured in accordance with this Code, and surrounded by a thirty (30) percent opaque county landscape buffer around the perimeter of the enclosed area. Such area shall include a 60:40 mix of evergreen and deciduous trees. This requirement may be reduced or waived by the director in areas where the buildings or other structures provide a comparable or better screening effect. Existing landscaping within ten (10) feet of the perimeter of the enclosed area may be applied towards the minimum planting requirements, upon approval of the director. The planting area must be adequate to allow for appropriate spacing for mature growth for the tree species. In no case shall the planting area be less than fifteen (15) feet from the edge of the solid fence or screen wall. Where fencing for screening is required by the director the fencing or screening material shall meet the standard of the zone district in which the WCF will be located. In no case may fencing material primarily be wire or metal.

6. **Adjacent to Residential Uses.** WCFS shall be sited in a manner that evaluates the proximity of the facility to residential structures. When placed near a residential property, the WCF shall be placed adjacent to the common side yard property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent properties. In the case of a corner lot, the WCF may be placed adjacent to the common side yard property line between adjoining residential properties, or on the corner formed by two intersecting streets. If these requirements are not reasonably feasible from a construction, engineering or design perspective, the applicant may submit a written statement to the director requesting the WCF be exempt from these requirements.

C. **Design Standards Specific to WCF Types.** The design requirements set forth in this section shall apply to the types of WCFs as specified below.

1. **Design Standards for Facilities Attached to Base Stations**.
   a. Roof mounted WCFs, including the antenna, support structures and screening, shall not project more than ten (10) feet above the roof line of a building.

b. WCFs shall be painted to match the building and shall be architecturally integrated with the building materials.
c. If placed on a structure or building which is non-conforming due to setbacks or height, the addition of antennas or equipment must not increase the non-conformity.
d. Façade mounted WCFs, including the antenna, support structures and screening, shall not extend above the top of the structure or the parapet wall, or, in the case of a pitched roof, above the fascia.
e. Base station mounted WCFS that are not small cell facilities shall not be placed on buildings with residential uses.
f. WCFs attached to base stations shall utilize camouflage design techniques. If an antenna is installed on a structure other than a tower or alternative tower structure, such as a base station (including, but not limited to the antennas and accessory equipment) it shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as technically feasible. Additionally, any ground-mounted equipment shall be located in a flush-to-grade underground equipment vault, unless otherwise authorized by the director.

2. **Design Standards for Alternative Tower Structures Not in the Right-of-Way.**
   a. Alternative tower structures not in the right-of-way shall;
      i. Be designed and constructed to look like a building, facility, structure, or trees typically found in the area or other natural feature.
      ii. Be camouflaged/concealed consistent with other existing natural or manmade features in or near the location where the alternative tower structure will be located.
      iii. Be architecturally compatible with the surrounding area.
      iv. Be the maximum size needed to obtain coverage objectives while maintaining compatibility with the context and character of the surrounding area. Height or size of the proposed alternative tower structure should be minimized as much as possible.
      v. Be sited in a manner that evaluates the proximity of the facility to residential structures and residential district boundaries.
      vi. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.
      vii. Be compatible with the surrounding topography and landscape.

3. **Design Standards for Towers.**
   a. Monopoles which taper from the base to the tip are preferred over lattice and guy towers with support.
   b. Towers shall be subject to any applicable FAA standards and county design approval processes.
   c. Tower structures should use existing landforms, vegetation, and structures to aid in screening the facility from view or blending in with the surrounding built and natural environment.
   d. All towers shall be enclosed by security fencing or wall and shall also be equipped with an appropriate anti-climbing device.
   e. Towers shall be compatible with the surrounding tree coverage and foliage.

4. **Design Standards for Accessory Equipment and Transmission Equipment.** Accessory equipment and transmission equipment for all WCFs shall meet the following requirements:
   a. All transmission equipment and accessory equipment shall be grouped as closely as technically possible.
   b. Transmission equipment and accessory equipment shall be located out of sight whenever possible by locating within equipment enclosures. Where such alternate locations are not available, the transmission equipment and accessory equipment shall be camouflaged or concealed in a manner appropriate to the character of the site.
   c. Transmission equipment and accessory equipment shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure or uses other camouflage/concealment design techniques so as to make the equipment as visually unobtrusive as possible, including, for example, painting the equipment to match the structure.
   d. Equipment enclosures shall be designed to be architecturally compatible. (See 16.1.4.C.2.a.)
5. **Design Standards for Small Cell Facilities in the Right-of-Way.** Small cell facilities in the right-of-way shall be designed and constructed to look like a facility or utility pole typically found in the right-of-way and shall comply with the following design standards.
   a. Collocations are preferred, and the number of poles within the right-of-way shall be limited as much as possible.
   b. Use of an existing traffic signal pole is discouraged.
   c. New facilities placed on new wooden poles is prohibited, unless authorized through the master license agreement.
   d. **Appearance**.
      i. With respect to a pole-mounted small cell facility, be located on, or within, an existing utility pole serving another utility;
      ii. Be camouflaged/concealed consistent with other existing natural or manmade features near the location where the facility will be located;
      iii. With respect to a pole-mounted small cell facility, be located on, or within, a new utility pole where other utility distribution lines are aerial, if there are no reasonable alternatives, and the applicant is authorized to construct the new utility poles;
      iv. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by communications companies on utility poles near the facility;
      v. Be sized to minimize the negative aesthetic impacts to the right-of-way and adjacent property;
      vi. Be designed such that antenna installations on traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be materially altered, as determined by the county in its sole discretion;
   e. **Ground Mounted Equipment.** Be designed such that any ground mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns in the reasonable discretion of the director, and may, where appropriate and reasonably feasible based upon technical, construction, and engineering requirements, require a flush-to-grade underground equipment vault. Ground-based equipment may be located within the rights-of-way on a

case-by-case basis, accounting for impacts of such equipment within the right-of-way on the public health, safety, and welfare

f. **Non-Interference.**
   i. The alternative tower structure shall comply with the Americans with Disabilities Act (ADA) and every other local, state, and federal law and regulations
   ii. The alternative tower structure shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way.
   iii. No alternative tower structure may be located or maintained in a manner that causes unreasonable interference. Unreasonable interference means any use of the right-of-way that disrupts or interferes with its use by the county, the general public, or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities, and any other activity that will present a hazard to public health, safety, or welfare;

g. **Heights.**
   i. The small cell facility shall not be more than ten feet higher (as measured from the ground to the top of the pole) than any existing utility or traffic signal within 600 feet of the pole or structure.
   ii. Any such facility shall in no case be higher than forty (40) feet, unless such pole is already existing at a greater height.
   iii. Any transmission equipment placed on an existing tower shall not extend more than five (5) feet above such pole. Small cell facilities attached to an electric distribution alternative tower structure may be located at the minimum height necessary to provide the safety clearance required by the electric utility if applicable.

h. **Spacing.**
   i. No new freestanding small cell facility shall be within 600 feet of another freestanding small cell facility in the right-of-way. These separation requirements do not apply to attachments made to existing alternative tower structures.
   ii. The director may exempt an applicant from these separation requirements if (1) the applicant demonstrates through technical network documentation that the minimum separation requirement cannot be satisfied for technical reasons, or (2) the director determines, when considering the surrounding topography; the nature of adjacent uses and nearby properties; and, the height of existing structures in the vicinity, that placement of a WCF at a distance less than 600 feet from another small cell facility will meet the intent of reducing visibility and visual clutter of small cell facilities to the extent possible.

i. **Other Equipment.** Equipment enclosures shall be located out of view as much as possible.

j. **Temporary Tower.** A temporary tower may be allowed for the purpose of maintaining or replacing an existing tower.

16.1.5 - Administrative Waiver.

A. Any of the above design standards may be waived by the director upon written application that demonstrates the following waiver criteria:
   1. The design standard prohibits or has the effect of prohibiting the provision of wireless service through the WCF at the location because the standard will not allow the technology to function at that location; and
   2. There is no existing nearby alternate structure for collocation or attachment that will provide the technological functionality and which otherwise meets the design standard sought to be waived; and
   3. The proposal for varying from the design standard represents a reasonable and best approximation of the specific standard sought to be waived; and
   4. The proposed alternative does not and will not constitute or create any public safety, health or welfare concern.

B. If any design standard is approved for waiver, the WCF proposed shall nevertheless meet all other applicable design standards not approved for waiver.

C. If a waiver request is denied for failure to meet any of the criteria specified above and there is no alternative for installation of the small cell facility at the particular location in a manner that meets the applicable design standards, then such application for the WCF for such specific location shall be denied.

16.1.6 - Review Procedures.

A. **Review Procedures for all WCFs**. The following requirements apply to all applications for WCFs. WCFs shall be processed in accordance with Table 16.B below and this section.

Table 16.B – Review Procedures and Requirements for Different Facility Types

Procedure	Applies to	Notice Given	Referral	Type of Decision	Appeal to	Time-frame
Site Plan (SP) – Sec. 6.0 and 6.1 of Code	• See Table 16 A for zoning districts and tower types • Eligible facilities requests	• notice of administrative decision sent to abutting property owners following administrative decision	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Administrative decision	BCC	60 days
Public Site Plan (PSP) – Sec. 6.2 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Administrative decision but may be approved by Board of County Commissioners.	BCC	90 days
Minor Special Review (MS) – Sec. 4.5 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	BCC approval including a public hearing		90 days
Special Review (SR) – Sec. 4.5 of Code	• See Table 16 A for zoning districts and tower types	• notice sent to neighboring properties within 500 feet of the property	• Sent to referral agencies within 14 days • Notice sent to cities if in a GMA	Two public hearings: PC recommendation and BCC approval		150 days

1. **Application.** An application must be made in accordance with Table 16.B depending on the type of facility and height. All items listed in Section 16.1.8 must be included in the application to be determined as a complete application by the director.
2. **Determination of Application Completeness.** An applicant shall submit a complete application. The director will determine whether the application is complete.
3. **Timelines for Review.** Unless applicant and county mutually agree otherwise, applications will be processed according to the following timelines:
    a. The review period begins to run when the application is filed and may be tolled only by mutual agreement of the county and the applicant, or in cases where the director determines that the application is incomplete.
    b. Final action on complete applications for WCFS other than small cell facilities will be in no more than one-hundred and fifty (150) days for a new WCF and ninety (90) days for collocations that do not qualify as an eligible facilities request, provided all standards in this chapter are met.
    c. Final action on complete applications for locating or collocating small cell facilities will be in no more than ninety (90) days, provided all standards in this chapter are met.
3. **Decision.** Any decision to approve, approve with conditions, or deny an application for a WCF, shall be in writing and supported by a written record. The applicant shall receive a copy of the decision.
4. **Appeal.** Any decision to approve, approve with conditions, or deny an application for a WCF must be done within the timeframes of Subsection 3 above.
5. **Compliance with Applicable Law.** Notwithstanding the approval of an application for new or modified WCFs or eligible facilities request as described herein, all work done pursuant to WCF applications must be completed in accordance with all applicable building, structural, electrical, and safety requirements as set forth in this Code and any other applicable laws or regulations. In addition, all WCF applications shall comply as follows:
    a. Obtain any separate permit or license required as issued by a local, state, or federal agency with jurisdiction of the WCF;
    b. Comply with easements, covenants, conditions and/or restrictions on or applicable to the underlying real property;
    c. Be maintained in good working condition and to the standards established at the time of application approval; and
    d. Remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than 10 calendar days from the time of notification by the county or after discovery by the owner or operator of the site. Notwithstanding the foregoing, any graffiti on WCFs located in the rights-of-way or on public property may be removed by the county at its discretion, and the owner and/or operator of the WCF shall pay all costs of such removal within 30 days after receipt of an invoice from the county.
6. **Compliance Report.** The applicant shall provide a compliance report within 45 days after installation of a WCF, demonstrating that, as installed and in operation, the WCF complies with all conditions of approval, applicable code requirements, federal, state and/or local laws, and/or regulations.

B. **Review Procedures for all WCFs except Eligible Facilities Requests.** No new WCF shall be constructed and no collocation or modification to any WCF may occur except after a written

request from an applicant, reviewed and approved by the county in accordance with this chapter. All WCFs except eligible facilities requests which are reviewed under subsection (D) of this section, shall be reviewed pursuant to the following procedures.

1. **Review Procedures for Towers, Base Stations Not in the Right-of-Way**. In all zoning districts, applications for towers shall be reviewed by the county for conformance with this chapter and using the procedures set forth in Sections based on the type of review required and noted in Table 16.B and design criteria.
   - **a.** Review Procedure types and criteria.
     - i. Site Plan procedures and criteria are set forth in Section 6.0 and 6.1 of this Code.
     - ii. Public Site Plan procedures and criteria are set forth in Section 6.2 of this Code.
     - iii. Minor Special Review procedures and criteria are set forth in Section 4.5 of this Code.
     - iv. Special Review procedure and criteria are set forth in Section 4.5 of this Code.
   - **b.** All applications for towers shall demonstrate that other alternative design options, such as using base stations or alternative tower structures, are not viable options as determined by the county.
   - **c.** Applications that are within five hundred (500) feet of residentially zoned property shall require a courtesy notification to abutting property owners.
   - **d.** Applications will be referred to the relevant city if within a Growth Management Area.

Note: *Chapter 4 and Chapter 12 will need minor language amendments to be consistent with the provisions in this chapter as follows:*
Chapter 4 – Change Section 4.5.3.F to add that "additional criteria in Sec. 4.3, use descriptions, and all applicable requirements of this code shall apply.
Chapter 12 – Add language to reference the compressed timeframes in this chapter.

2. **Review Procedures for Small Cell Facilities in the Right-of-Way**. Small cell facilities are permitted within the right-of-way, subject to approval of a master license agreement executed by the county manager and adherence to all the following standards:
   - a. Small cell facilities shall be a permitted use by right in county rights-of-way subject to review and approval from the county.
   - b. No new small cell facility shall be constructed in the right-of-way except after a written request from an applicant is reviewed and approved by the county in accordance with this section; after execution of a license agreement with the county, if required, or other legal right or approval to use such structure by its owner; and upon issuance of a building permit. All work done pursuant to small cell facility applications must be completed in accordance with all applicable building and safety requirements as set forth in this Code and any other applicable regulations.
   - c. New small cell facilities shall be contained in a structure that is architecturally compatible with the surrounding area through application of camouflage and concealment design techniques.
   - d. Applications for WCFs in the rights-of-way that are adjacent to residentially zoned property shall require a courtesy notification to abutting property owners.
   - e. Applications will be referred to the relevant city if within a Growth Management Area.

C. **Review Procedures for Eligible Facilities Requests**. This section applies to any eligible facilities requests for colocation on, or modification to an existing tower or base station that does not substantially change the physical dimensions of such facility.

1. **Review Required for Eligible Facilities.** No colocation or modification to any existing tower or base station may occur except after a written request from an applicant is reviewed and approved by the director.
2. **Review Criteria.** Upon receipt of an application for an eligible facilities request pursuant to this section, the county shall review administratively such application to determine whether the application meets the following criteria for an eligible facilities request:
    a. Does not result in a substantial change;
    b. Does not violate a generally applicable law, regulation, or other rule reasonably related to public health and safety and complies with generally applicable building, structural, electrical, and safety codes;
    c. Complies with the original application design elements or conditions of approval, including but not limited to colors, textures, surfaces, scale, character, and siting, or any approved amendments thereto, subject to the thresholds established in the definition of substantial change; and
    d. Complies with concealment elements of the eligible support structure necessary to qualify as a concealed facility.
3. **Timeframe for Reviewing Eligible Facilities Requests.** Subject to the tolling provisions of subparagraph (4) below, within sixty (60) days of the date on which an applicant submits a complete application, as determined by the director, seeking approval under this subsection, the county shall approve the application unless it determines that the application is not covered by this section or otherwise in non-conformance with applicable codes.
4. **Tolling of the Timeframe for Review.** The 60-day review period begins to run when the application is filed and may be tolled only by mutual agreement of the county and the applicant, or in cases where the director determines that the application is incomplete.
    a. To toll the timeframe for incompleteness, the county must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application;
    b. The timeframe for review continues running again the following business day after the applicant makes a supplemental written submission in response to the county's notice of incompleteness; and
    c. Following a supplemental submission, the county will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified above in (a) and (b). In the case of a second or subsequent notice of incompleteness, the county may not specify missing information or documents that were not delineated in the original notice of incompleteness.
5. **Interaction with Telecommunications Act Section 332(c)(7).** If the county determines that the applicant's request is not an eligible facilities request as delineated in this section of the Code, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the county's decision that the application is not a covered request. To the extent such information is necessary, the county may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.

16.1.7 - Application Requirements.

A. **Application.** Applications shall follow the procedures set forth in 16.1.6.A.1 and A.2.

B. **Application Not Required for Maintenance.** A WCF application is not required for routine maintenance or replacement of existing facilities or equipment, so long as the new facilities or equipment are consistent with the approved size, height, concealment, screening, and other applicable site and facility design elements being replaced. A building permit is required for all routine maintenance or replacement of existing facilities or equipment.

C. **Application Requirements for all WCFs Except Eligible Facilities Requests.** The following items are required for all non-eligible facilities request WCF applications. All items must be included to be determined to be a complete application by the director:

1. **Vicinity Map**. A vicinity map shall be provided. Such map shall include all residential properties located within 1,000 feet of the proposed site.
2. **Project Description**. A project statement identifying the proposed facility and the communication service to be provided by the proposed facility. The project statement must indicate the facility's suitability for co-location, which is encouraged where co-location will have less visual impact on the surrounding area than another facility. The project description shall include a written description of how the proposal complies with all applicable WCF standards.
3. **Proof of Ownership or Lease Rights**. The applicant shall demonstrate that it owns or has lease rights to the subject site (prior to construction). The owner shall sign the application form or provide a letter of authorization.
4. **Photo-Realistic Simulations or Renderings**. Photo simulations which illustrate "before" and "after" conditions as they relate to installation of the WCF. Photos should be taken from all adjoining public streets and, when adjacent to residential properties, from the vantage point where the WCF and equipment will be visible.
5. **Elevation Drawings**. Elevation drawings of the proposed facility and any ground-based equipment. The drawings should indicate the location on the site, height, appearance, color, and material proposed, including information concerning topography.
6. **Plan.** A site and rooftop plan shall be provided which indicates the location, dimensions, setbacks, and height of all existing and proposed WCF, including freestanding facilities, antenna, and ground based equipment. Proposals that include freestanding facilities or ground based equipment shall show all existing and proposed buildings, landscaping, and fencing on the site. Plans shall indicate materials and colors of poles and equipment, setbacks, adjacent uses, drainage, compliance with the county's intersection and driveway sight distance standards, and other information deemed by the director to be necessary to assess compliance with this section. Information and documents regarding fencing and landscaping shall be provided by applicant where applicable and at the request of the director. Documents requiring signatures and seals by appropriate qualified professionals shall be provided by the applicant after approval of the application by the director
7. **Signal Non-Interference Letter**. A letter certifying all WCFs shall be designed, sited, and operated in accordance with applicable federal regulations addressing radio frequency interference.
8. **Radio Frequency Emissions Letter**. A letter certifying all WCFs shall comply with federal standards for radio frequency emissions.
9. **Submittal fees**. Application fees in accordance with the fee scheduled published annually in the Community Development Department.

10. **Landscaping Agreement.** If in a Growth Management Area, an agreement detailing the schedule for installation of landscaping and screening if applicable and responsibility for landscaping, screening, and site maintenance and the replacement of dead landscaping.
11. **Federal Aviation Administration (FAA) letter.** If located near an airport as defined by an airport influence area or in a flight path, the application must include an FAA response to the notice of proposed construction or alternation (FAA Form 7460-1 or equivalent).
12. **Inventory of Existing Sites**. For WCFs that are not small cell facilities in the right-of-way, the applicant shall provide a narrative description and a map of the applicant's existing or currently proposed WCFs within the county and within one mile of county boundaries. In addition, the applicant shall inform the county generally of the areas in which it believes WCFs may need to be located within the next three (3) years. The inventory list should identify the site name, address, and a general description of the facility (i.e., rooftop antennas and ground-mounted equipment). This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information, or make commitments regarding locations of WCFs within the county. This information will be used to assist in the county's comprehensive planning process, and promote collocation by identifying areas in which WCFs might be appropriately constructed for multiple users.
13. **For small cell facilities in the right-of-way**. The applicant shall provide an inventory of existing or proposed small cell facilities in the right-of-way. Alternatively, the execution of a master license agreement or similar authorization for deployment in the right-of-way which addresses the requirements of this subsection shall be deemed to be compliance with the submittal requirement of an inventory of existing sites for small cell facilities in the right-of-way.
14. **Abandonment and Removal.** A letter or affidavits on a form approved by the county shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
15. **Sharing of Information.** The county may share such nonproprietary information with other applicants applying for administrative approvals or conditional permits under this section or other organizations seeking to locate WCFs within the jurisdiction of the county, provided however, that the county, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. **Application Requirement for Eligible Facilities Requests.** The director shall prepare, and from time to time revise and make publicly available, an application form which shall be limited to the information necessary for the county to consider whether an application is an eligible facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification or collocation. Such information may include, without limitation in addition to the application requirements for other WCFs above, whether the project:

1. Would result in a substantial change;
2. Violates a generally applicable law, regulations, or other rule codifying objective standards reasonably related to public health and safety.

16.1.8 - Definitions.

ACCESSORY EQUIPMENT. Any equipment serving or being used in conjunction with a WCF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or other structures including fences.

ALTERNATIVE TOWER STRUCTURE. Man-made trees, clock towers, bell steeples, light poles, traffic signals, buildings, and similar alternative design mounting structures that are compatible with the natural setting and/or surrounding structures, and camouflages or conceals the presence of antennas or towers so as to make them architecturally compatible with the surrounding area pursuant to this chapter including height limits as set forth in this code. This term also includes any antenna or antenna array attached to an alternative tower structure. A stand-alone monopole (including a replacement pole) in the right-of-way that accommodates small cell facilities is considered an alternative tower structure to the extent it meets the camouflage and concealment standards of this chapter.

ANTENNA. Any device used to transmit and/or receive radio or electromagnetic waves such as, but not limited to panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations, or other similar devices and configurations, and exterior apparatus designed for telephone, radio, or television communications through the sending and/or receiving of wireless communications signals.

APPLICANT. (Relevant to this chapter of the Code.) Any person who submits an application to the county to site, install, construct, collocate, modify and/or operate a WCF.

BASE STATION. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower including the defined accessory equipment. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the county under this chapter of the Code and has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support; and
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks) that, at the time the relevant application is filed with the county, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the relevant application is filed with the county, does not support or house equipment described in paragraphs 1 and 2 above.

CAMOUFLAGE, CONCEALMENT, OR CAMOUFLAGE DESIGN TECHNIQUES. A WCF is camouflaged or utilizes camouflage design techniques when any measures are used in the design and siting of WCF with the intent to eliminate or as much as reasonably possible minimize the visual impact of such facilities to surrounding uses. A WCF site utilizes camouflage design techniques when it (i) is integrated in an outdoor fixture (such as a flagpole), or (ii) uses a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree, steeple, or silo) or is incorporated into (including, without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or

other traffic signs or freestanding light standards) so that the presence of the WCF is not readily apparent.

COLLOCATION. The mounting or installing of a WCF on a pre-existing structure, and or 2) modifying a structure for the purpose of mounting or installing a WCF on that structure provided that, for purposes of eligible facilities requests, "collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and /or receiving radio frequency signals for communications purposes.

DIRECTOR. The Director of Community Development, or their designee.

ELIGIBLE FACILITIES REQUEST. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: (i) collocation of new transmission equipment, (ii) removal of transmission equipment, or (iii) replacement of transmission equipment.

ELIGIBLE SUPPORT STRUCTURE. Any tower or base station as defined in this chapter, provided that it is existing at the time the relevant application is filed with the county under this chapter of the Code.

EXISTING TOWER OR BASE STATION. A constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time it was built. For example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

MONOPOLE. A single, freestanding pole-type structure supporting one or more antennas.

OVER-THE-AIR-RECEIVING-DEVICE (OTARD) ANTENNA:

1. An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter (1 m) or less in diameter; or
2. An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one meter (1 m) or less in diameter or diagonal measurement; or
3. An antenna that is designed to receive television broadcast signals.

POLE-MOUNTED SMALL CELL FACILITY. A small cell facility with antenna that are mounted and supported on an alternative tower structure, which includes a replacement pole.

PUBLIC PROPERTY. Real property owned or controlled by the county, excluding the right-of-way.

RADIO FREQUENCY EMISSIONS LETTER. A letter from the applicant certifying, all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

RADIO OR TELEVISION TOWER OR TRANSMITTER. Freestanding non-concealed communications facilities used to transmit radio and television broadcasts, including: lattice towers, monopole towers, guyed towers, or other freestanding facilities that do not meet the definition of a freestanding concealed communications facility.

READILY APPARENT. For purposes of determining whether a WCF is readily apparent, the phrase means that the facility, in the discretion of the director, will be easily recognizable as a WCF to a reasonable person viewing the facility as a whole and in the context of any adjacent improvements and landscaping from publicly accessible locations when considering the character, scale, and height of

nearby and surrounding natural or architectural features. Methods of design and construction that may assist in reducing the visibility of a facility and reaching a conclusion that a facility is not readily apparent include the use of color mimicking surrounding structures and landscaping, minimizing facility size to the greatest extent feasible, integrating the facility into any adjacent or attached improvements, and positioning the facility in a manner that limits the degree to which the facility projects away from any adjacent structures or landscaping. Due to differences in site characteristics, a determination that a particular WCF will not be readily apparent at one location shall not establish a precedent for the same determination for a facility of the same or similar design or construction at a different location.

REPLACEMENT POLE. A newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution, or street light poles or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a WCF or small cell facility or to accommodate collocation and remove the pre-existing pole or structure.

RIGHT-OF-WAY. Any public street, way, alley, sidewalk, median, parkway, or boulevard that is dedicated to public use.

SITE. For this chapter of the Code, the area comprising the base of the structure and other related accessory equipment deployed on the ground including the area to be leased.

SMALL CELL FACILITY. A WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.).

SIGNAL NON-INTERFERENCE LETTER. A letter from the applicant certifying, all WCFs that are the subject of the application shall be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

SUBSTANTIAL CHANGE. A modification that substantially changes the physical dimensions of an eligible support structure if, after the modification, the structure meets any of the following criteria:

1. For towers, other than alternative tower structures in the right of-way or other towers in the right-of-way, it increases the height of the tower by more than ten (10) percent or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater;
2. For towers, other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
3. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or for towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;
4. For any eligible support structure, it entails any excavation or deployment outside the current site;

5. For any eligible support structure, it would defeat the concealment elements of the eligible support structure. For the purposes of this subsection (5), a change which undermines the concealment elements of an eligible support structure will be considered to defeat the concealment elements; or
6. For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1), (2), and (3) of this definition. For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

SUPPORT STRUCTURE. A structure designed to support small cell facilities including, but not limited to, monopoles, alternative tower structures, replacement poles, and other freestanding self-supporting pole structures.

TOLL AND TOLLING. Toll and tolling shall mean to delay, suspend or hold off on the imposition of a deadline, statute of limitations or time limit.

TOWER. Any structure built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private broadcast services as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

TRANSMISSION EQUIPMENT. Equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

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

Attachment B –
What's Changed Since the June Wireless Communications Facilities draft?

The Planning Commission reviewed a draft of the WCF regulations for the June 19 hearing. Since that time staff and consultants have made some changes to the draft, and to aid in understanding what changed and why, the list below summarizes the changes.

- **Overall** – Cleans up and reorganizes the draft to achieve better consistency of terms and style with other sections of Land Use Code (e.g., lower case terms vs. upper case). Note that definitions are now more consistent with state regulations (i.e., small cell facility vs. small wireless facility), as well as definitions for towers and bases stations. Definitions are used more consistently throughout the chapter.
- **Section 16.1.1 – Intent and Purpose.**
    - Adds a Severability clause (Subsection D) to note that if any section of the regulations is found unconstitutional, the remainder would not be affected.
    - Removes former "Section 16.1.2 – Classification of WCFs" to be more consistent with other sections of the code.
- **Section 16.1.2 – Where Allowed.**
    - Zoning District Table. Simplifies and removes redundancies with procedures and standards (i.e., removes reference to requirement for permits for all facilities, which appears in Section 16.1.1 C; removes minimum setbacks requirements from table because they appear in the design standards section; and removes other design standards which appear later).
    - Carries forward similar height limits from the current code for certain zoning districts (i.e., AP – Airport ≤ 40 feet high, B business and RFLB ≤ 80 feet high) rather than unlimited heights in most districts, for further discussion at the work session.
- **Section 16.1.3 – Operational Standards.**
    - Clarifies executing a master license agreement for facilities in the right-of-way.
    - Moves "Notification in GMA" to later procedures section with neighborhood notification.
- **Section 16.1.4 – Design Standards**.
    - Overall, clarifies which standards apply to specific types (i.e., all, attached, alternative towers) and small cell facilities in or out of the right-of-way, and removes some redundancies.
    - (former Section 16.1.4) Minimum Setbacks moved to Design Standards
        - Clarifies that setbacks do not apply to facilities in the right-of-way.
        - Carries forward the current setback of 30% of tower height for facilities that are not adjacent to residential or rights-of-way.
        - Clarifies that building height limits of the zoning district apply for structures.
    - Moves definition of "readily apparent" to definitions section.
    - Colocation. Clarifies that it is not required when it would compromise the camouflage design intent.
    - Groups the design standards for small cell facilities (e.g., heights, spacing) to make easier to follow.
    - Clarifies that monopoles rather than lattice structures are preferred tower types.
    - Recommends the higher standard for landscaping in the GMAs and otherwise retention of trees and landforms of site and landscaping that is compatible with the site and camouflage or concealment technique.

- **Section 16.1.5 – Administrative Waiver.** No changes

- **Section 16.1.6 – Review Procedures.**
    - Table 16.B is reworked to reference the review procedures and timeframes and removes design standards such as heights.
    - Reorganizes the section to follow the same organization as the design standards section with procedures for towers, procedures for facilities in the right of way, then eligible facilities requests procedures.
    - Includes the “shot clock” timing requirements up front.
    - Cross references the relevant review sections of the code which set forth the review bodies and procedures and criteria for each type (i.e., site plan, public site plan, minor special review, and special review).
    - Removes redundant design standards for facilities in the right of way that are in the previous section.
    - Under eligible facilities section, removes the section entitled “failure to act.”
    - Adds a note about changes necessary in Chapters 4 and 12 to achieve consistency with this chapter.
- **Section 16.1.7 - Application Requirements.**
    - Clarifies and removes some redundant sections.
    - Carries forward a requirement that the owner sign the application.
    - Includes a new abandonment and removal affidavit section.
    - Fixes typographical error in “non-interference” letter requirement.
    - Carries forward a landscaping agreement requirement.
    - Carries forward the FAA letter requirement that was left out of the former draft.
- **Section 16.1.8 – Definitions.**
    - Cleans up definitions (towers and base stations).
    - Modifies small cell facilities definition.
    - Adds readily apparent definition.
    - Adds toll and tolling definition.

WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT

THIS WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT ("Agreement") is entered into this __ day of ____, 2019("Effective Date"), by and between Larimer County, Colorado ("Licensor") and (name of agency) with its principal office located at (street address).

RECITALS

A. The Company owns and/or controls, maintains and operates a wireless and fiber communications Network (as defined in Section 1.4 below) that serves its wireless carrier customers.

B. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Small Cell Facilities in the rights-of-way (as defined in Sections 1.12, 1.11 and 1.14, respectively, below).

C. The Licensor is the owner of the right-of-way, streets, utility easements and similar property rights, as well as certain facilities located in the public rights-of-way situated within the county limits of Larimer County, Colorado.

D. The Company will agree to comply with Licensor's right-of-way and land use requirements as provided herein.

Section 1. DEFINITIONS

For the purpose of this Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary. To the extent this Agreement refers to terms that are defined in Chapter 16 and any other applicable provisions of the Larimer County Land Use Code, as amended, those definitions shall apply.

1.1. "Affiliate" means any entity that, directly or indirectly controls, is controlled by, or is under common control with, the Company.
1.2. "Applicable Laws" means any statutes, constitutions, charters, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, franchises, administrative orders, certificates, orders, or other requirements of the Licensor or other governmental or judicial authority having the force and effect of law that determines the legal standing of a matter relating to the parties and/or this Agreement.
1.3. "Emergency" means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking

SAMPLE

water or gas conduit systems, damaged, obstructed or leaking sewer or storm drain conduit systems and damaged electrical and communications facilities.

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

1.5. "FCC" means the Federal Communications Commission.

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

1.7. "Network" or collectively "Networks" means one or more of the wireless and fiber-based communications facilities operated by the Company to serve its wireless carrier customers in Larimer County and its vicinity.

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

1.9. "Person" means any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

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

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

1.12. "Small Cell Facility" means a wireless service facility that meets both of the following qualifications:

(i) Each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and

(ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

1.13. "Supplemental Site License" means a document, substantially in the form attached as Exhibit A. Each SCF installation will be subject to a Supplemental Site License.

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

SECTION 2. GRANT OF AUTHORITY

2.1 Grant of License. The Licensor hereby grants to the Company, a non-exclusive license to use and occupy the right-of-way throughout the territorial boundaries of the Licensor, as these boundaries may be adjusted from time to time due to annexations, to attach, install, operate, maintain, upgrade, remove, reattach, reinstall, relocate and replace the Small Cell Facilities identified in each Supplemental Site License. This grant is subject to the terms, conditions and other provisions set forth in this Agreement and all Applicable Laws. The Company shall install its SCFs consistent with the Licensor's applicable ordinances and regulations. The parties understand and agree that this Agreement is a limited grant of authority subject in all respects to Applicable Law, including without limitation, those regarding the kind, size, height and bulk of structures in the right-of-way, and further subject to all provisions contained herein, including without limitation, Exhibit B.

2.2 Company is responsible for verifying the location and title to any Right of Way, including any title work, and surveying. Licensor does not warrant or guarantee the location or existence of any particular Right-of-way.

2.3 Installations on Poles.

2.3.1 SCFSCFs owned and/or controlled by the Company may be installed only on the following, and in the listed priority: (i) Licensor's traffic signal poles or other Licensor-owned poles in the right-of-way under the terms of this Agreement, (ii) third-party poles in the right-of-way under the terms of a fully executed pole attachment agreement with the Owner of such poles, (iii) on street lighting poles in the right-of-way approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor, or (iv) in instances where no other reasonable opportunity for attachment exists, on the Company's proprietary poles newly installed in the right-of-way. The Company shall be responsible for complying with all obligations under this Agreement regarding equipment, irrespective of ownership of or title to such equipment. Subject to the exception described below, all SCFs shall be installed on poles located at SCF. For attachments of SCF in the right-of-way on structures owned by the Licensor, in addition to all obligations of this Agreement, the Company shall be bound by the requirements contained in Exhibit B, and all applicable Licensor rules and regulations, which may be modified by Licensor from time to time.

2.3.2 Traffic control during installation, maintenance, or reclamation will be provided by the Company according to the following standards:_____. In all cases of installation, construction, or reclamation, the Company shall provide a traffic control plan prior to the work. The Company may not commence the work if the Licensor believes that the traffic control plan is insufficient. The Company shall be responsible for, and indemnify and defend the Licensor for, any incident or claim that arises out of the Company's work within the Right-of-Way, specifically any incident or claim relating to the travelling public.

2.4 License Term. The initial term of this Agreement shall commence upon the Effective Date and shall expire _____ (__) years from the Effective Date (the "Term"), unless

renewed as herein provided in Section 7.2. The term of each Supplemental Site License shall be concurrent with the term of this Agreement; provided, however that the minimum term of a Supplemental Site License shall be five (5) years. If the Term of this Agreement expires before the end of any five (5) year Supplemental Site License term, this Agreement shall remain in effect only with respect to any Supplemental Site License through the end of such Supplemental Site License's term.

2.5 Conditions. The rights afforded to the Company under this Section 2 are granted subject to the conditions herein provided, the applicable attachments to this Agreement, and all Applicable Laws. In the event of any conflict between this Agreement, including the Exhibits, and the Larimer County Land Use Code as it exists on the effective date of this Agreement, the Larimer County Land Use Code prevails, except as federal or state law may preempt or act to modify the Larimer County Land Use Code at present or in the future. Future amendments to the Larimer County Land Use Code shall also prevail in the case of any conflict with any provisions of this Agreement and any Exhibits, so long as the Larimer County Land Use Code changes do not alter any material rights granted herein, and except as federal or state law may preempt or act to modify the Larimer County Land Use Code.

2.6 Non-Exclusive License. The Company's right to use and occupy the right-of-way and attach to structures therein shall not be exclusive. The Licensor reserves the right to grant a similar use to itself or any Person at any time. Existing users of the right-of-way shall not be harmed as a result of Company's use.

2.7 Waiver of Claims. In consideration for the rights granted under this Agreement, the Company waives all claims, demands, causes of action, and rights it may assert against the Licensor and its officials, personnel, agents, and representatives because of any loss, damage, or injury to any Wireless Communications Facilities, or any loss or degradation of service resulting from the installation, operation, maintenance or malfunction of Wireless Communications Facilities regardless of cause.

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

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

2.10 Sub-Tenants and Sub-Licensees of Company. The parties understand and agree that the Company intends to provide access to the SCF to its customers through leases, licenses or similar agreements. The Company shall require in its agreements with its customers that its customers agree to be subject to all terms, conditions and obligations of this Agreement as they may relate to the customers' use of the SCF and that the customers shall further comply with all Applicable Laws. The parties acknowledge and agree that Company's provision of service may include "turnkey service" whereby Company

installs equipment to which its customer owns legal title. As part of "turnkey service", Company (including its contractors and agents) will be the responsible party for all of the operation, repair and maintenance of such equipment under this Agreement. If a Company customer desires to operate, repair and maintain such equipment it is understood that such customer must first obtain a Master License Agreement from the City.

Section 3. PERMITS, CONSTRUCTION, OPERATION AND MAINTENANCE IN THE PUBLIC RIGHTS-OF-WAY

3.1 License Requirement/Processing Fees. Each SCF will be subject to a Supplemental Site License pursuant to the terms and conditions of this Agreement. The Company may terminate any Supplemental Site License for convenience at its discretion, subject to a notice period of 30-days and all obligations for removal of facility, restoration of the SCF and any other applicable conditions of law related to such termination. The Company shall also submit processing fees to the Licensor for each Supplemental Site License, which fees are non-refundable, are comparable to Licensor's fees for similar permits, and may be modified in the future to be consistent with fees then imposed on like activities. At present, the foregoing fees include up to eight (8) hours of inspection by the Licensor. If the Licensor reasonably requires additional inspection beyond eight (8) hours then Company agrees to pay for such inspections at the rate of $90.00 per hour or at such rate as may be charged by the Licensor for similar inspections in the future. The Company shall also submit such other information as may be reasonably requested by the Licensor.

3.2 Permitted Use of Right-of-Way. Right-of-way may be used by the Company, seven (7) days a week, twenty-four (24) hours a day, only for the SCFs attachment, installation, maintenance, upgrade, removal, reattachment, reinstallation, relocation, replacement, use and operation of SCFs and not for any other purpose. It is understood that the purpose for installing SCFs at designated SCF in the right-of-way is to augment Network capacity otherwise provided through the installation of other facilities, such as traditional tower structures and fiber backhaul. New types of SCFs that may evolve or be adopted using wireless technologies may be included in this Agreement at Licensor's discretion.

3.3 Application and Approval of SCF.

A. 3.3.1 The Company shall file with the Licensor Supplemental Site Licenses for proposed SCFs for which the Company is seeking approval. A single Supplemental Site License may seek authority for up to ten (10) SCFs under this Agreement. The request must include information on (i) the Owner of the pole upon which the SCF is proposed to be installed; (ii) where poles are owned by a third party, a letter of authorization from the Owner of the poles confirming that Company has authority to make the requested attachment(s); and (iii) such other information as set forth on Exhibit A, which may, in the Licensor's sole discretion, be modified from time to time to meet the needs of the Licensor. If the SCF is proposed in rights-of-way owned by another governmental entity, a copy of the agreement authorizing the Company access to that right-of-way is also required. Upon filing of a complete

request for a Supplemental Site License, the Licensor shall process the request within twenty (20) business days, or within such other time as designated by Applicable Law. If the application is incomplete, the Licensor will notify the Company of the deficiencies within ten (10) days, and Company shall have ten (10) days to correct the deficiencies and resubmit the application. Notwithstanding the foregoing, if the Supplemental Site License request seeks permission to install or construct any SCFs that are not subject to administrative approval, the time in which the Licensor shall direct the Company to apply for the necessary land use permission shall be that period permitted under Applicable Law and the Larimer County Code.

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

C. 3.3.3 Upon finding that a request for a Supplemental Site License is complete and if it meets all criteria, the Licensor will determine whether the location (and any existing pole) identified by the Company as a SCF is within the right-of-way. If it is not, then, except as set forth in Section 3.3.1, the request would be outside the scope of this Agreement.

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

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

3.5 Duty to Minimize Interference. At the county's discretion, the Company shall not impede, obstruct or otherwise interfere with the installation, existence or operation of any other facility in the right-of-way, including but not limited to sanitary sewers, water mains, storm water drains, gas mains, traffic signals and/or utility poles, Licensor-owned street lights, aerial and underground electrical infrastructure, cable television and telecommunication wires, public safety and Licensor networks, and other telecommunications, utility, or Public Property. All Company activities in the right-of-way shall be carried on as to minimize Interference with the use of the right-of-way and

with the use of private property, in accordance with all regulations of the Licensor necessary to provide for and protect public health, safety and convenience.

3.6 Relocations.

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

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

3.7 Duty to Repair. Any right-of-way, Public Property or private property that is disturbed or damaged during, or as a result of, the construction, reconstruction, repair, replacement, removal, relocation, operation or maintenance of any SCFs by the Company or its agents or contractors shall be promptly repaired by the Company at its sole expense.

3.8 Inventory of SCF. The Company shall maintain a current inventory of SCFs throughout the Term. Upon written request of the Licensor, which request may be madeperiodically

and is not required to be made annually, the Company shall provide to the Licensor a copy of the inventory of SCF by December 31st of each year until the end of the Term. The inventory shall include roadway intersection (if applicable), GIS coordinates, date of installation, the Company Site ID #, type of pole used for installation, pole Owner, and description/type of installation for each SCF installation. Concerning SCFs that become inactive, the inventory shall include the same information as active installations in addition to the date the SCF was deactivated and the date the SCF was removed from the right-of-way. The Licensor will compare the inventory to its records to identify any discrepancies.

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

3.10 Signal Interference Prohibited.

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

3.10.2 Response Protocol. The protocol for responding to events of Interference will require the Company to provide the County Engineer an Interference remediation report that includes the following items:

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

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

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

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

Section 4. EMERGENCY CONTACTS

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

4.1.1 Level One Contact: The Company's network operations center may be reached 24/7 at: _____ (phone) email: _____

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

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

4.2 Company's Duty to Maintain Current Emergency Contacts. The Company shall maintain the Emergency contact information current at all times with the dispatch office at 303-795-3900.

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

The Licensor's public safety communications dispatch may be reached 24/7 at: 303-795-3900.

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

Notwithstanding the foregoing, within three (3) days after undertaking the Emergency work, the Company is required to submit a complete application for a right of way permit in order to allow the Licensor to update its records of the work.

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

Section 5. INDEMNITY AND INSURANCE

5.1 Indemnity.

5.1.1 The Company shall indemnify, defend and hold the Licensor, its employees, officers, elected officials, agents and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the SCFs, any of its or its customers' activities on any SCF, or the Company's breach of any provision of this Agreement.

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

5.1.3. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by Company to represent the Indemnified Party, the Company shall pay for all reasonable expenses incurred by the Indemnified Party as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the Indemnified Party shall select its own counsel and any other experts or consultants, The Indemnified Party's expenses hereunder shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Indemnified Party's attorney or his/her assistants or any employees of the Indemnified Party or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Indemnified Party by the Company.

5.2 Insurance.

5.2.1 The Company shall carry during the Term, at its own cost and expense, the following insurance: (i) commercial general liability insurance with a minimum limit of liability of $2,000,000 per occurrence and $4,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations; (ii) excess or umbrella liability on an occurrence basis in excess of the commercial general liability insurance, which has coverage as broad as such policy, with a limit of not less than $2,000,000; (iii) Workers' Compensation Insurance as required by law; and (iv) employers' liability insurance with minimum limits of $500,000 bodily injury each accident, $500,000 bodily injury each disease, and $500,000 bodily injury disease aggregate. Notwithstanding the foregoing, the Licensor may increase the aforementioned minimum limits of insurance at any time in its sole discretion. The Company shall require each of its contractors to adhere to these same requirements or shall insure the activities of the contractors in the Company's insurance policies.

5.2.2 All of the insurance coverages identified in Section 5.2.1, except the workers' compensation insurance, shall apply to and name the Licensor as an additional insured, and shall provide a defense and indemnification to the Licensor regardless of the Licensor's fault or wrongdoing. The insurance shall indemnify and defend the Licensor against all loss, damage, expense and liability arising out of or in any way connected with the performance of this Agreement. Each of such insurance coverages shall contain a waiver of subrogation for the Licensor's benefit. Further, the insurance coverages identified in Section 5.2.1 will be primary and non-contributory with respect to any self-insurance or other insurance maintained by the Licensor.

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

5.2.4 The Company shall provide thirty (30) days advance notice to the Licensor in the event of cancellation of any coverage or modification of any coverage such that it is no longer compliant with this Section 5.2.

5.2.5 All of the primary insurance policies Company, and its contractors to the extent applicable under Section 5.2.1, are required to maintain in this Section 5.2 shall be obtained from insurance carriers having an A.M Best rating of at least A-X, and each excess insurance policy shall be obtained from an insurance carrier having an A.M. Best rating of at least A-VIII.

Section 6. DEFAULT AND REMEDIES

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

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

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

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

costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor.

6.5 Termination for Convenience. Licensor may terminate this agreement for convenience upon one hundred eighty (180) days notice. Company is then required to comply with any reclamation, mitigation, relocation, or repair connected to the termination.

Section 7. AMENDMENT AND RENEWAL

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

7.2 Renewal.

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

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

Section 8. ASSIGNMENT/TRANSFER OF OWNERSHIP OR CONTROL

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

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

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

8.2 No Transfer. Subject to Section 2.9, the Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, this Agreement, any Supplemental Site License as provided for herein, or any of the rights or privileges therein granted, without the prior written consent of the Licensor, except that such consent shall not be required for a transfer or assignment to an Affiliate. The consent required by the Licensor may be conditioned upon the performance of those requirements necessary to ensure compliance with the obligations of this Agreement. The Company shall provide no less than thirty (30) days written notice to the Licensor of the details of any transaction described herein that requires Licensor consent. Once the Company obtains Licensor consent to transfer or assign this Agreement to a third party as required under this Section, the Company shall be authorized to transfer each Supplemental Site License to such third party without further consent or approval. The Company shall provide no less than thirty (30) days written notice to the Licensor of a transaction covered in this Section to a non-Affiliate that it believes is compliant with its obligations to the Licensor.

8.3 Company Control. The requirements of Section 8.2 shall also apply to any change in Control of the Company. A rebuttable presumption that a transfer of Control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty-one percent (51%) or more of the voting shares of the Company. The consent required (other than with respect to Affiliates and non-Affiliates that are currently operating in the Licensor and are in full compliance with all obligations to the Licensor) may be conditioned upon the performance of those requirements necessary to ensure compliance with the specific obligations of this Agreement imposed upon the Company by the Licensor. For the purpose of determining whether it should consent to transfer of Control, the Licensor may inquire into the qualifications of the proposed transferee and the Company shall assist the Licensor in the inquiry.

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

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

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

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

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

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

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

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

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

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

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

Section 9. MISCELLANEOUS

9.1 Severability. If any Applicable Law renders any provision of this Agreement invalid, the remaining provisions of the Agreement shall remain in full force and effect.

9.2 Force Majeure. Neither the Company nor the Licensor shall be deemed to be in default,

non-compliance, or in violation of any provision of this Agreement where performance was hindered or rendered impossible by war or riots, civil disturbances, natural catastrophes or other circumstances beyond their control.

9.3 No Waiver.

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

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

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

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

if to Licensor:

Larimer County
200 W. Oak Street
Fort Collins, CO 80521
ATTN: Director of Public Works

with a copy to:

Larimer County
200 W. Oak Street
Fort Collins, CO 80521
ATTN: County Attorney

if to Company:

Agency Name
Agency Address

ATTN: General Counsel

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

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

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

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

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

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

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

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

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

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

[Signature page follows.]

[Signatures on WIRELESS COMMUNICATIONS FACILITIES MASTER LICENSE AGREEMENT.]

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

LARIMER COUNTY, COLORADO

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM

BY: _____
County Attorney
Name:_____

AGENCY NAME

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A

SUPPLEMENTAL SITE LICENSE

This Supplemental Site License, made this _____ day of _____, 20____ ("Effective Date") between Larimer County, hereinafter designated "Licensor," and _____, hereinafter designated "Company":

1. Supplemental Site License. This is a Supplemental Site License as referenced in that certain Wireless Communications Facilities Master License Agreement in connection with the operation of Company's Network, between Licensor and Company dated _____, 201_ (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

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

3. SCF Equipment. The SCFs to be installed at the SCF are described in Attachment 1, Table 2 attached hereto.

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

5. Fees. If this Supplemental Site License is for attaching SCFs to Licensor-owned structures in the right-of-way, the initial annual attachment fee shall be $200.00 ("Attachment Fee"). Such annual Attachment Fee shall not be applicable to street lighting poles approved for street lighting purposes by the Licensor that are purchased by the Company and assigned to the Licensor pursuant to Section 2.2(iii) of the Agreement.

6. Commencement Date. The commencement date of this Supplemental Site License is the first day of the month following the date Company has commenced installation of its SCFs at the SCF.

7. Approvals. It is understood and agreed the Company's ability to use the SCF is contingent upon its obtaining all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Company determines that such Governmental Approvals may not be obtained in a timely manner; or (iv) Company determines

one or more licensed SCFSCF is no longer technically compatible for its use, Company shall have the right to terminate all or part of this Supplemental Site License. Notice of Company's exercise of its right to terminate shall be given to Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Company, or upon such later date as designated by Company. All fees paid to said termination date shall be retained by Licensor. Upon such termination, all or part of this Supplemental Site License, as applicable shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder and in the Agreement. Otherwise, Company shall have no further obligations for the payment of any Attachment Fee to Licensor.

[Signature page follows.]

[Signature page for Supplemental Site License.]

EXECUTED to be effective as of the date shown above.

LICENSOR:

LARIMER COUNTY, COLORADO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

BY: _____
County Attorney
Name:_____

COMPANY:

AGENCY NAME, LLC

By: _____
Name: _____
Its: _____

Attachments:
Attachment 1

ATTACHMENT 1

Table 1

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

Table 2

SCF ID NO.	PROPOSED POLE ALTERATION	RESULTANT POLE HEIGHT	TYPE OF EQUIPMENT ATTACHED

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

1. Plot plan, engineering design, and specifications for installation of the Wireless Communication Facility, including the location of radios, antenna facilities, transmitters, equipment shelters, cables, conduit, point of demarcation, backhaul solution, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment. Where applicable, the design documents shall include specifications on design, pole modification, and ADA compliance.
   a. The plot plan shall show existing sidewalk size, existing utilities, existing trees, traffic control signs and equipment, and other existing improvements.
2. For Licensor poles, include documentation from the Licensor verifying the pole is eligible for attachment. Also include a load bearing study that determines whether the pole requires reinforcement or replacement in order to accommodate attachment of the Wireless Communication Facility. If pole reinforcement or replacement is warranted, the design documents shall include the proposed pole modification.
3. For new pole installations, include documentation verifying the pole location is in the right-of-way and is eligible for installation. Include list of adjacent property owners. If the proposed installation includes a new pole, provide design and specification drawings for the new pole.
4. For third-party owned poles, a copy of the agreement or other written authorization demonstrating that Company is authorized to make the attachments proposed.
5. If the proposed installation will require reinforcement or replacement of an existing pole, provide applicable design and specification drawings.
6. The number, size, type, and proximity to the facilities of all communications conduit(s) and cables to be installed.
7. Description of the utility services required to support the facilities to be installed.
8. 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.
9. For Licensor-owned traffic signal poles, provide information required by Exhibit C of the Agreement.

EXHIBIT B

Operational and Design Criteria
(Note: Will be updated with proposed standards from Chapter 16 of Land Use Code)

A. Operational Standards.

(1) Federal Requirements. All Small Cell Facilities and other SCFs and associated Equipment (collectively, "SCFs") shall meet the current standards and regulations of the FAA, FCC and any other agency of the federal or state government with the authority to regulate telecommunication equipment. If such standards and regulations are changed, Company shall bring such SCFs into compliance with such revised standards and regulations within the time period mandated by the controlling federal or state agency. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the SCFs from any site under this Agreement at Company's expense.

(2) Radio Frequency Standards. All SCFs shall comply with federal standards for radio frequency emissions. If concerns regarding compliance with radio frequency emissions standards are made to Licensor, Licensor may request that Company provide information demonstrating compliance. If such information suggests, in the reasonable discretion of Licensor, the SCFs may not be in compliance, Licensor may request and Company shall submit a project implementation report which provides cumulative field measurements of radio frequency emissions of all antennas installed at the subject site, and which compares the results with established federal standards. If, upon review, Licensor finds the SCF does not meet federal standards, Licensor may require corrective action within a reasonable period of time, and if not corrected, may require removal of any SCFs as an unauthorized use under this Agreement. Any reasonable costs incurred by Licensor, including reasonable consulting costs to verify compliance with these requirements, shall be paid by Company upon demand by Licensor or, if such costs remain unpaid after demand, Licensor may recover such costs by the same manner and method authorized to recover nuisance abatement costs under the Larimer County Land Use Code.

B. Design Standards.

(1) In addition to any requirements of the Larimer County Land Use Code, the requirements set forth in this Exhibit shall apply to the location and design of all SCFs governed by this Agreement as specified below; provided, however, Licensor may waive these requirements if it determines the goals of this Exhibit are better served thereby. To that end, SCFs shall be designed and located to minimize the impact on the subject neighborhood and to maintain the character and appearance of the specific location.

(2) General Principles.

a. All SCFs covered by this Agreement shall be architecturally compatible with the surrounding area;

b. All electrical, communication, and other wiring to SCF components, including radios, antennae and backhaul connections, shall be fully concealed, internal to the structure where possible;

c. Height or size of the proposed SCFs and any replacement pole should be minimized and conform to the standard form factor of a Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable;

d. SCFs 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 SCF to first and second story windows;

e. Equipment shall be designed to be compatible with the site, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness. Appurtenances shall match the standard form factor of Licensor traffic signal or Licensor or utility company street light or distribution pole to the maximum extent practicable; and

f. SCFs and any associated landscaping fencing shall be designed and located outside of intersection sight distances and in accordance with Applicable Laws.

(3) Camouflage/Concealment. All SCFs shall, to the extent possible, match the appearance and design of existing Licensor traffic signal or Licensor or utility company street light or distribution pole adjacent to the SCF; and when not technically practicable, that SCF is to use camouflage design techniques including, but not limited to the use of materials, colors, textures, screening, landscaping, or other design options that will blend the SCF to the surrounding natural setting and as built environment. Design, materials and colors of SCFs not identical to existing Licensor traffic signal or Licensor or utility company street light or distribution poles shall otherwise be compatible with the surrounding environment.

a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views, and/or community features). In such instances where a SCF is located in areas of high visibility, they shall (where possible) be *designed to minimize their profile.*

b. All SCF components, including antennas, vaults, equipment rooms, equipment enclosures, and tower structures shall be constructed out of non-reflective materials (visible exterior surfaces only).

(4) Hazardous Materials. No hazardous materials shall be permitted in association with SCFs, except those necessary or requested for the operations of the SCFs and only in accordance with all Applicable Laws governing such materials.

(5) Siting.

a. No portion of any SCF may extend beyond the right-of-way without prior approval(s).

b. Collocation. SCFs may be required to be designed and constructed to permit the support structure to accommodate equipment from at least two (2) wireless service providers on the same support structure unless Licensor approves an alternative design. Company shall not unfairly exclude a competitor from using the same facility or location. Irrespective of Company's rights, if any, under 47 U.S.C. § 1455(a) (codifying Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012) and the FCC's implementing regulations thereunder, including 47 C.F.R. § 1.40001, Company shall not, (i) unless otherwise agreed to by the parties in a Supplemental Site License and (ii) unless the Company obtains any additional, required permitting and land use approval in accordance with Applicable Law, install a pole in the right-of-way with a height in excess of what is permitted in the Larimer County Land Use Code. The Licensor shall weigh requests by Company to include any of the foregoing in a Supplemental Site License in light of the 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 Applicable Law.

c. SCFs shall be sited in a location that does not reduce the parking for the other principal uses on the parcel below Licensor standards unless it is the only option.

(6) Lighting. SCFs shall not be artificially lit, unless required by the FAA or other applicable governmental authority, or the SCF is mounted on a light pole or other similar structure primarily used for lighting purposes. If lighting is required, Licensor may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Lighting shall be shielded or directed to the greatest extent possible so as to minimize the amount of glare and light falling onto nearby properties, particularly residences.

(7) Landscape and Fencing Requirements.

a. Ground-mounted SCF components shall be sited in a manner that does not reduce the landscaped areas for the other principal uses on the parcel, below City standards.

b. Ground-mounted SCF components shall be landscaped with a buffer of plant materials that effectively screen the view of that part of the SCF from adjacent residential property. The standard buffer shall consist of the front, side, and rear landscaped setback on the perimeter of the site.

c. In locations where the visual impact of the SCF would be minimal, the landscaping requirement may be reduced or waived altogether by Licensor.

(8) Noise. Noise generated on the site must not exceed the levels permitted by local standards, except as may be expressly permitted by local approval for short periods of time.

(9) Additional design requirements shall be applicable to the various types of SCFs as specified below:

a. Base Stations. Any antenna installed on a structure other than a municipal structure (including, but not limited to the antennas and accessory equipment) shall be of a neutral, non-reflective color that is identical to, or closely compatible with, the color of the supporting structure, or uses other camouflage/concealment design techniques so as to make the antenna and related facilities as visually unobtrusive as possible.

b. Alternative Tower Structures located in the Right-of-Way. In addition to the other criteria contained in this Exhibit and the Larimer County Land Use Code, an Alternative Tower Structure located in the right-of-way shall:

i. With respect to its pole-mounted components, be located on an existing utility pole serving a utility; or

ii. Be camouflaged/concealed consistent with other existing natural or manmade features in the right-of-way near the location where the Alternative Tower Structure will be located; or

iii. To the extent reasonably feasible, be consistent with the size and shape of the pole-mounted equipment installed by Licensor and any communications companies on utility poles near the Alternative Tower Structure;

iv. Be sized to minimize the negative aesthetic impacts to the right-of-way;

v. Be designed such that antenna installations near traffic signal standards are placed in a manner so that the size, appearance, and function of the signal will not be negatively impacted and so as not to create a visual distraction to vehicular traffic;

vi. Require any ground mounted SCF components be located in a manner necessary to address both public safety and aesthetic

concerns under local requirements, and may, where appropriate, require a flush-to-grade underground equipment vault; and

c. Related Accessory Equipment. Accessory equipment for all SCFs shall meet the following requirements:

i. All buildings, shelter, cabinets, and other accessory components shall be grouped as closely as technically possible;

ii. The total footprint coverage area of the accessory equipment shall not exceed thirty-six (36) square feet;

iii. Accessory equipment, including but not limited to remote radio units, shall be located out of sight by locating behind landscaping, parapet walls, within the pole, behind an attached sign on a pole or underground. Where such alternate locations are not available, the accessory equipment shall be camouflaged or concealed.

iv. Notwithstanding subsections (i) – (iii), accessory equipment shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle, or pedestrian access or visibility along the right-of-way. The location of SCFs must comply with the Americans With Disabilities Act and all Applicable Law.

(10) Setbacks and Separation. The minimum setbacks and separation requirements of the Larimer County Land Use Code shall apply to all SCFs and each Supplemental Site License.

(11) Nothing in the Agreement or this Exhibit B shall be interpreted to authorize the installation of macro wireless communications service facilities, macro base stations, or similar high-powered cellular or wireless broadband facilities in the right-of-way, or the installation of macro wireless towers, or poles intended for macro facilities.

EXHIBIT C

ATTACHMENTS TO LICENSOR-OWNED TRAFFIC SIGNAL FACILITIES

Traffic Signal Pole Requirements

Traffic signal poles already supporting police equipment are not eligible to be considered for Company's SCF. Company's SCF placed on traffic signal poles may be required to be relocated at any time if the Licensor-owned infrastructure is needed for placement of police equipment.

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

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

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

Cables, conduits and bands must not interfere with access to or operation of any of the traffic signal equipment. Specific clearances may be required and will be reviewed on a case-by-case basis.

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

For installations on traffic signal poles, involved personnel must hold at least a Level I IMSA Traffic Signal certification (level II preferred) to demonstrate comprehension of the implications of any negative impacts to the Licensor's traffic signal infrastructure.

Any installation or servicing of SCF located on traffic signal poles shall be coordinated with the Licensor's Traffic Operations and Traffic Engineering groups a minimum of three business days in advance.

SCF located on traffic signal poles may be required to be removed and/or reset at any time at the sole cost of the Company due to any work performed by or authorized by the Licensor.