

**APPLICATION FOR
MORRIS COUNTY RIGHT OF WAY OCCUPANCY
PERMIT**

***This Application is to be provided only to
individuals and entities
which seek permission to install
antennas, small cells, and other wireless communication devices and associated equipment
in the County's Right of Way**

[LOGO/SEAL]

**REQUIRED INFORMATION TO APPLY FOR
MORRIS COUNTY RIGHT OF WAY OCCUPANCY PERMIT
FOR PURPOSE OF INSTALLING ANTENNAS, SMALL CELLS, AND
OTHER WIRELESS COMMUNICATION DEVICES
AND ASSOCIATED EQUIPMENT**

SECTION I. APPLICATION REQUIREMENTS

Construction Permits are required for Right of Way (“ROW”) occupancy associated with Utility Installations and Maintenance, including the installation of antennas, small cells, and other wireless communication devices and associated equipment in the County ROWs.

A. Consents and Approvals.

Submit the approvals and consents required by law, including but not limited to

- Any and all applicable Municipal approvals, including but not limited to any and all zoning, planning, construction or other land use approvals required by the County and/or the Municipality in which the proposed antenna is to be located.
- The Applicant bears the burden of demonstrating, with written evidence acceptable to the County Engineer, that all municipal approvals have been obtained or that no such approvals are required by the municipality.
- County Planning Board Approval Letter and Plans required, if applicable.
- The Right of Way Occupancy Agreement approved and executed by the Morris County Board of Chosen Freeholders (see Exhibit A).
- Written consent of the governing body of the municipality in which the road is located, property owner of any affected property, and/or pole owner, if and as required by law.

B. Application Form.

Submit complete ROW Occupancy Permit Application. A complete ROW Occupancy Permit Application includes:

- A fully completed and executed Permit Application Form;
- Submission of proof of all consents and/or approvals required by Section A of these ROW Occupancy Permit Application instructions (attach at Attachment A); and
- Submission of satisfactory proposed project plans and drawings (attach at Attachment B)
 - The submission of satisfactory proposed project plans and drawings shall include, but not be limited to, location maps that current county road map or municipal tax map (3 copies), with the proposed project site clearly delineated together with engineered drawings (3 copies) at a scale of one inch equals 50 feet.

- The proposed project site must be identified on the engineered drawings in accordance with the New Jersey State Plane Coordinate System using NAD 1983 or the Morris County GIS standards. All topographic features in the County Right of Way shall be shown for the project site.
- The following information shall be shown on the engineered drawings:
 - Right-of-way line from the County Road;
 - Setback and location of the all proposed structures and poles;
 - Curb--existing and proposed;
 - Sidewalks--existing and proposed;
 - Trees within County right-of-way;
 - Signs--regulatory, warning, directional, and private;
 - Utility poles within 500 feet;
 - Locations of all lot driveways
 - County Roadway electrical installations;
 - Distance to nearest traffic signals
 - A temporary traffic control plan for each stage of construction as may be required at the discretion of the County Engineer
 - Standard details with dimensions for all foundations, footings, antennas, utility poles, electrical and telecommunications connections and cabinetry

SECTION II. CERTIFICATE OF INSURANCE

C. Certificate of Insurance.

Submit a Certificate of Insurance and Endorsement Page which meets the requirements of Article VIII(c) of the Right of Way Occupancy Agreement (attached as Exhibit A), naming the County of Morris as an Additional Insured and Certificate Holder.

Certificate Holder: **County of Morris**
 P.O. Box 900
 Morristown, NJ 07963

The Certificate of Insurance is subject to approval by County of Morris, Risk Management Division.

SECTION III. GENERAL INFORMATION

A. Penalties.

Fines may be assessed for construction in violation of any County, State or Local laws, Ordinances or regulations including unauthorized drainage connections.

Approved
Date Road paved _____

**Office of the Engineering & Transportation Morris County, New Jersey
(973) 285-6749**

APPLICATION FOR RIGHT OF WAY OCCUPANCY PERMIT

Complete and submit to Division of Engineering, Administration & Records Building
10 Court Street, Morristown, New Jersey 07963-0900

NOT VALID UNLESS COUNTERSIGNED BY THE COUNTY SUPERVISOR OF ROAD INSPECTION

Date: _____ **PERMIT NUMBER:** _____

Application is made by _____ Phone No. _____

Applicant's address _____

Contractor Name _____ Phone No. _____

Contractor's Address _____

For a permit to occupy: _____
Location of Right of Way

For purpose of: _____
Specify proposed work

From: _____ To: _____
(Give approximate limits; show on diagram below)

Height: _____ Width: _____ Depth: _____ Square Yards: _____

Number of poles being installed: _____ Size(s) of pole(s) being installed: _____

Number of antennas being installed: _____

Type of property to be disturbed: _____

Work will be started on _____ Completed on _____

Remarks: _____

**RULES, REGULATIONS GOVERNING ROAD OPENINGS, RIGHT OF WAY
OCCUPANCY, AND STORAGE PERMITS**

Adopted by the Morris County Board of Chosen Freeholders December 5, 1985, last amended
September 27, 2017

1. It shall be unlawful for any person, firm, corporation or municipality to make any excavation in or tear up the surface for any purpose whatsoever of any roadway or road right of way which is under the jurisdiction of the County of Morris without a written permit for road openings or right of way occupancy first having been obtained from the County Engineer as hereinafter provided.
2. Any and all applications for a permit for road openings or right of way occupancy on any roadway or road right of way, the maintenance of which is chargeable to the Board of Chosen Freeholders of Morris County, must be made in writing. Said application is to state the purpose of such application, namely: sewer, water, gas, telephone or any other purpose. Permits for road openings or right of way occupancy do NOT carry any right to make sewer, water, gas or other connections. A separate permit to make such connections must be obtained from proper officials having jurisdiction therefore. **No permit will be issued to open any roadway or road right of way three years after the date the roadway or road right of way was paved.**
3. Individuals or entities which are granted a permit for road openings on or in any roadway or road right of way may be required to enter into a Right of Way Agreement with the County, which shall, among other requirements, contain insurance and indemnification obligations. Regardless of whether the County requires such a Right of Way Agreement, individuals or entities granted a permit for road opening shall comply with the County's insurance and indemnification provisions set forth in the Application for Road Opening Permit. Any and all individuals or entities which are granted a permit for right of way occupancy on or in any roadway or road right of way shall enter into a Right of Way Occupancy Agreement with the County, which shall, among other requirements, require compliance with the insurance and indemnification obligations set forth within.
4. Any and all individuals or entities which are granted a permit for road openings and/or a permit for right of way occupancy on or in any roadway or road right of way ("Permittees") shall make any and all arrangements with adjacent property owners for the removal or relocation of any shrubs, fences, structures, trees or embankments, etc., whether they are in the roadway or road right of way, or on private property, necessary for Permittees' construction. Permittees shall make any and all arrangements with utility companies for the location, relocation and protection of any of the utility companies' installations necessary for Permittees' construction. Permittees shall save County harmless from any suits or claims by any person or entity for damages to trees, shrubs, lawns, etc. caused by Permittees or Permittees' equipment, successors, assigns, subcontractors, agents, servants, officers, employees, designees, volunteers, guests and invitees.
5. Permittees will be held responsible for any and all tree damage caused by the negligence of Permittees or Permittees' equipment, successors, assigns, subcontractors, agents,

servants, officers, employees, designees, volunteers, guests and invitees when working along County roads or road rights of way. The County Shade Tree Division must approve all removal of and/or work done around shade trees in the roadway or road right of way.

6. All subcontractors employed by Permittees holding permits to work on Morris County roadways or road rights of way must submit to the County insurance certificates in the minimum amounts required by the County of Morris and issued to the "Morris County Board of Chosen Freeholders".
7. Unless covered by a Municipal Corporation or Utility Agreement, a deposit of cash will be required for each opening of the roadway or road right of way, the amount thereof to be determined by the County Supervisor of Road Inspection. Upon completion of project, the deposit will be returned provided no maintenance bond is required. See Paragraph 10.
8. It shall be the duty of Permittees to properly guard any work on a roadway or road right of way performed pursuant to a permit for road openings, right of way occupancy, or storage by erecting suitable barriers by day and lights by night for the duration of the work. Sufficient warning signs, and watchmen, (flagmen and/or special Officers) shall be posted at each end of the work area to control traffic unless not deemed necessary by the County Supervisor of Road Inspection. Coordination of traffic control shall be made with the local police department, subject to the municipality(s) ordinances, regulations and procedures.
9. Permittees shall be liable for any neglect to safeguard the traveling public. If the permitted work on a roadway or road right of way extends the full width of the roadway or road right of way, only one-half of it shall be made at one time and it shall be backfilled before the other half is excavated, so as to maintain traffic at all times. In any other case there shall at all times be maintained a vehicular lane. No highway or bridge shall be encumbered for a longer period than shall be necessary to execute the work.

Pavement openings, digging, backfilling and temporary and permanent repairs must be done in accordance with County of Morris General Specifications. Permanent repairs shall not be made until approval has been given by the County Supervisor of Road Inspection.

10. The County must approve any connection to or removal of portions of existing County bridges or drainage structures located within municipal or County road or road right of way. The surface of any County highway or bridge and any pavement or flagging taken up by Permittees in its construction work shall be restored by and at the expense of Permittees to at least good condition as existed before the commencement of the work thereon, and shall thereafter be maintained at the expense of Permittees in said condition for three years within the paved roadway or road right of way, after completion of same. For refund of deposit, Permittees shall post a three year maintenance bond or, in lieu thereof, enter into an Agreement with Morris County to leave twenty percent (20%) of the deposit on deposit with the County for three (3) years.

All trenches in macadam or bituminous pavement shall be replaced with six (6) inches of quarry process stone sub-base: five (5) inches of bituminous stabilized base course; and two (2) inches of F.A.B.C. top course. Trenches crossing a concrete road shall be replaced with 9 inches of Class B Concrete.

No permanent paving to be done between December 1 and April 1.

11. For any work over 15 square yards done under these Rules and Regulations, Permittees shall submit blueprints or plans with Planning Board letter of approval, if applicable, and if it is considered necessary or desirable, a joint general inspection of the site of the work, with Permittees, maybe directed as to be made by the County Supervisor of Road Inspection before the permit is issued. After the approval of the blueprint or plan, if in the course of the proposed construction shown thereon any changes or deviations become necessary in the work, Permittees shall, before making such changes or deviations, obtain the County Supervisor of Road Inspection. Upon completion of the entire work, permits shall file plans with the Supervisor of Road Inspection showing in full detail all of the work after its completion.
12. In connection with permitted work, it shall be unlawful for any Permittee, or any successors, assigns, subcontractors, agents, servants, officers, employees, designees, volunteers, guests and invitees of the Permittee to place or store material of any description whatsoever, or vehicles or other equipment by any nature whatsoever, upon any County roadway or road right of way so as to interfere with the flow of water along the gutters or to interfere with traffic on such roadway or road right of way without first having obtained a permit for such storage. The permit shall state the approximate quantity of material or the number of vehicles or equipment to be stored and the time of such storage and the same shall be guarded as set forth in Section B.
13. No excavation shall be opened for a distance of more than two hundred feet any one time. All excavations shall be properly backfilled and all equipment shall be removed from the public right-of-way at the end of each day's work and during periods of heavy traffic, and at such times as may be required for non-interference with snow removal, and at such times as directed by the Supervisor for Road Inspection.

Metal plates capable of supporting traffic loads shall be used to temporarily cover road opening at such times and at such places as shall be designated by the Supervisor of Road Inspection. When so used, metal plates must be adequately ramped, to avoid the possibility of displacement; however plates must be removed on the weekend, if allowed plates must be flush mount during winter months December 1 — April 1.

14. Unless an emergency exists, no work shall start before 9:00 A.M. of each work day and all equipment and materials must be moved off the roadway or road right of way and the roadway or road right of way swept clean by 4:00 P.M. unless otherwise noted on front of permit. Unless Road Inspection has issued prior authorization and unless Permittee has provided a letter agreeing to Inspection Fees, **no work shall be permitted on Saturdays,**

Sundays, holidays, definitely when roadway or road right of way is snow or ice covered, or after asphalt plants have stopped making stabilized base. Emergency roadway or road right of way openings (gas or water leak, sewer stoppage, etc.) shall be reported to the County Supervisor of Road Inspection on the next regular work day and all permit requirements met as requested by said Supervisor. Work extending beyond 9:00 A.M. — 4:30 P.M. will result in inspection compensation at the rate of \$100/Hr.

15. All services installations shall be bored or jacked under the roadway or road right of way whenever possible. Tunneling will not be permitted under any circumstances and shall be unlawful exercise of the privilege under any such permit and a violation thereof.

All utilities shall cross under all existing County drains and roadway or road right of way intersections at a minimum depth of five feet below grade. Care shall be exercised in all crossing of any County drains. Any damage to drains shall be repaired by contractor/applicant immediately at his own proper expense, and work on remainder of job shall be suspended until drain is repaired and is in working order. POWER LINE ducts at roadway or road right of way crossings must be encased in RED CEMENT and installed at a minimum depth of 5 feet below grade. POWER LINE ducts at locations other than roadway or road right of way crossings may be SAND ENCASED but must be installed at a minimum depth of 4 feet below grade.

All house laterals shall be run in to the property lines one foot beyond the County roadway or right-of-way.

16. The issuance of a permit does not waive the obtaining of any or all Federal, State or Municipal permits including environmental permits for stream encroachments or wetlands.
17. This permit is valid for as long as insurance is in effect. Failure to adhere to conditions set forth herein shall void the permit.
18. The County Supervisor of Road Inspection is charged with the enforcement of all the provisions of these Rules and Regulations and is the agent acting for the Board of Chosen Freeholders.
19. Any person, firm, corporation, municipal or private utility violating these rules and regulations shall be subject, upon conviction, to a fine not exceeding \$200.00 per day for each and every day the violation exists, and civil action for the cost of prosecution as well as civil action for trespass to remove the non-conforming use.
20. The following Rules and Regulations govern and apply solely to requests and/or applications for Right of Way Occupancy Permits to install antenna, small cells, and other wireless communication devices and associated equipment in the roadway or road right of way, either on existing or new poles. The following Rules and Regulations are not meant to apply to small cell sites, other similar wireless communication devices and associated equipment or macrocell sites mounted on tall antenna structures including but

not limited to monopoles or lattice towers that are inappropriate for installation in the County's Rights of Way, but rather only to installations on utility-type poles. The County has also determined that it will not permit any installations on traffic signal poles or stanchions:

- a. General Requirements. Notwithstanding any other County law to the contrary, no antenna(s), small cell(s), or other device(s) for wireless communication ("antenna") or pole(s) for the purposes of supporting an antenna ("antenna pole") may be installed in the County's roadway or road right of way except in accordance with this Section.
 - i. No antenna(s) or antenna pole(s) may be installed in the County's roadway or road right of way unless and until there is a Right of Way Occupancy Agreement, approved and executed by the County, that specifies, at a minimum, the proposed height, width, location, and general design of any and all proposed antenna(s), antenna pole(s), and any associated wires, conduits, cabinets, fixtures, facilities, or other equipment. Following the full execution of such an Agreement, the installation of the proposed antenna(s) and/or antenna pole(s) shall be coordinated with and subject to approval by the County Engineer.
 - ii. No antenna(s) or antenna pole(s) may be established in the County's roadway or road right of way without the consent of the governing body of the municipality, property owner, and/or pole owner, as required by law. In addition, the installation of any antenna(s) or antenna pole(s) in the County's roadway or road right of way shall be subject to and conditioned upon the receipt of any and all zoning, planning, or other land use approvals required by the municipality in which the proposed antenna is to be located. The applicant of any proposed antenna(s) or antenna pole(s) shall bear the burden of demonstrating, with written evidence acceptable to the County Engineer, that all municipal approvals have been obtained or that no such approvals are required by the municipality.
 - iii. Any antenna(s) or antenna pole(s) established in the County's roadway or road right of way shall be designed and camouflaged to mitigate visibility and blend in with the area in which the proposed antenna or antenna pole will be located. Any antenna(s) or antenna(s) pole established in the County's roadway or road right of way shall comply with all applicable standards established by the American Association of State of Highway Transportation Officials (AASHTO), County Engineering Design Standards, and all generally applicable building, structural, electric, and other standards related to health, safety, and welfare.
- b. Co-Location of Antennas on Existing Utility or Antenna Poles. The applicant of any antenna proposed to be co-located on an existing utility or antenna pole in the County's roadway or road right of way must demonstrate by clear and convincing

technical evidence that inability to install an antenna at a proposed location would prohibit or have the effect of prohibiting the provision of telecommunications or personal wireless service. In the event that an antenna is co-located on an existing utility or antenna pole, the antenna shall be no greater than ten percent (10%) or ten (10) feet higher, whichever is less, than the height of the existing utility or antenna pole (excluding any antenna or other fixture extending above the top of the pole), except as otherwise required by law. Any facility supporting or associated with the establishment of an antenna on an existing utility or antenna pole shall be no greater than 20 square feet and no greater than 2 feet in width.

- c. Establishment of Antenna Poles. The applicant of any antenna pole proposed to be established within the County's roadway or road right of way must demonstrate by clear and convincing technical evidence that co-locating a proposed antenna on an existing utility or antenna pole would prohibit or have the effect of prohibiting the provision of telecommunications or personal wireless service. An antenna pole established in the County's roadway or road right of way shall be no greater than ten percent (10%) or ten (10) feet higher, whichever is less, than the height of the nearest existing utility or antenna pole (excluding any antenna or other fixture extending above the top of the pole) within 50 feet, and in no event shall the antenna pole be greater than 60 feet in height. An antenna established on the antenna pole shall be no greater than ten percent (10%) or ten (10) feet higher, whichever is less, than the antenna pole itself. Any facility supporting or associated with the establishment of an antenna on an antenna pole shall be no greater than 20 square feet and no greater than 2 feet in width. In no event shall more than 10 antenna poles be established with the County's roadway or road right of way per one (1) mile, and in no event shall more than 2 such poles be established per 500 feet. Further, in no event shall any antenna pole be established within 50 feet of another antenna pole. Any utility pole established in the County's roadway or road right of way shall be set back from the roadway travel edge at least 8 feet.
- d. Finality and Appeals. Any decision under this Section by the County Engineer shall be final, and appealable in accordance with R. 4:69 of the New Jersey Rules of Court.

The Applicant agrees to comply with the rules and regulations printed above as well as all laws, ordinances and resolutions, relating to said work, and the acceptance of the permit shall be deemed an agreement to abide by all its terms and conditions.

The Applicant further agrees that in the event it shall cause, through negligence, improper action or omission while the work is in progress or after completion, the county to incur costs in order to rectify any problem, said costs shall be paid by the Applicant. The Applicant agrees that he is liable for charges incurred by the County.

Signed (Applicant) _____

Name (printed) _____

Title _____

By Signing Permit you are agreeing to Rules and Regulation

Note:

To submit by e-mail, click the "Submit by E-mail" button, which will prompt you to save this PDF file. Please send that pdf to MCabrera@co.morris.nj.us.

EXHIBIT A

RIGHT OF WAY OCCUPANCY AGREEMENT

RIGHT OF WAY OCCUPANCY AGREEMENT

BETWEEN

THE COUNTY OF MORRIS

AND

(Applicant)

Dated:

RIGHT OF WAY OCCUPANCY AGREEMENT

This **AGREEMENT** (“Agreement”), made as of the ___ of _____, _____ (the “Effective Date”) by and between The County of Morris, having mailing address of Court Street, P.O. Box 900, Morristown, State of New Jersey, 07963-0900 (hereinafter designated as the “County”); and _____, with a principal place of business located at _____ (hereinafter designated as “Developer”). County and Developer from time to time shall each be referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Developer wishes to attach and/or install antenna, small cell, or other device for wireless communication and/or a pole for the purposes of supporting an antenna in a Right of Way; and

WHEREAS, the County is willing to consent to Developer installing and maintaining an antenna(s) and/or antenna pole(s) in a Right of Way to the extent the County is lawfully permitted to do so.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

ARTICLE I DEFINITIONS

As used herein, the following terms, when capitalized, shall have the following meanings:

(a) “Antenna” means an antenna, small cell, or other device for wireless communication and any associated wires, conduits, cabinets, fixtures, facilities, or other equipment.

(b) “Antenna Pole” means a pole established for the purposes of supporting an Antenna, and any associated wires, conduits, cabinets, fixtures, facilities, or other equipment.

(c) “Applicable Laws” means all present or future requirements of common law, and all present or future federal, state, and local, provincial and foreign, civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders issued, adopted, or promulgated by any Governmental Authority (defined below), which governs, regulates, or affects any act, right, agreement, or obligation set forth herein or arising directly or indirectly herefrom, including but not limited to, the Telecommunications Act of 1996 (47 U.S.C. §224, et seq.), the National Electrical Safety Code, the regulations promulgated by the Federal Communications Commission (hereinafter “FCC”), and the Morris County Road Opening Permit Requirements.

(d) “Development” means the construction, reconstruction, conversion, structural alteration, relocation, enlargement, maintenance, attachment, or installation of any antenna,

antenna pole, or other structure, or of any excavation or landfill, and any use or change in the use of any antenna, antenna pole, or other structure, or Right of Way or extension of use of Right of Way.

(e) “Governmental Authority” means any applicable federal, state, local, provincial, foreign, or other governmental, legislature, regulatory or administrative agency, commission, official, department, board, or other governmental subdivision, court, tribunal, arbitral body, or other governmental body.

(f) “Right of Way” means the areas devoted to passing over, on, through or under lands as part of a way for such purpose, that are under the jurisdiction of the County. This term shall not include municipal, state, or federal rights of way or any property owned by any person, agency or entity other than the County, except as provided by applicable Laws or pursuant to an agreement between the County and any such person or entity.

ARTICLE II INSTALLATION OR ATTACHMENT OF POLES

(a) Any and all rights expressly granted to Developer under this Agreement, which shall be exercised at Developer’s sole cost and expense, shall be subject to the prior and continuing right of the County under Applicable Laws to use any and all parts of the Right of Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Right of Way. Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Developer a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to the reasonable prior review and approval of the County.

(b) Subject to the conditions and terms set forth in this Agreement, the County hereby authorizes, consents and permits Developer to enter upon the Right of Way and to **[add description of development: attach, install, maintain, and/or remove the Antenna(s) and/or Antenna Pole(s)]** within the Right of Way at locations illustrated in the enclosed project drawings attached hereto as *Exhibit A*.

(c) Developer, in the performance and exercise of its rights and obligations under this Agreement, shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written consents or approvals of the governing body of the municipality with jurisdiction over the affected property, property owner(s) of the affected or abutting property, and/or pole owner as required by Applicable Law or this Agreement. The County agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the County may enter into after the Effective Date with other information or communications providers and carriers.

(d) In consideration of the right to being granted herein by the County, the County shall receive the benefit of enhanced telecommunications services.

ARTICLE III TERM

This Agreement shall be for an initial term of fifteen (15) years (“Initial Term”) to commence on the Effective Date. The County grants Developer the right to renew this Agreement for up to three (3) additional terms (each a “Renewal Term”) of five years each. The right to renew shall be exercised by written notice from Developer to the County one year prior to the end of the current term. Upon receipt of Developer’s notice, the County may cancel or modify such permission and authority affected at the end of the currently effective term. Notwithstanding the foregoing, either party may cancel or modify such permission and authority affected at the end of the currently effective term. Upon expiration of such consent and the end of the Initial or Renewal Term, or at such earlier date that Developer ceases to maintain its facilities, Developer shall remove the facilities at its costs and expense. Nothing herein shall be deemed to be a waiver of Developer’s rights under law.

ARTICLE IV OPERATIONAL RULES

(a) Developer will be solely responsible for obtaining any and all real property easements, rights-of-way, permissions, and consents, and any other required consents from third parties, including but not limited to the necessary express written consents of abutting property owners and/or municipalities having jurisdiction, as required by law, as are required in order to install, use, operate, and maintain the Antenna and/or Antenna Pole attached to or installed on the property of third parties and/or to perform any right or act under this Agreement. All costs associated with obtaining such easements, rights-of-way, permissions, and consents, including but not limited to legal, engineering, and administrative costs, will be borne solely by Developer.

(b) Prior to commencement of the Development set forth herein, Developer will obtain at its sole expense any required agreements, permits, licenses, certificates, and/or consents from Governmental Authorities, including but not limited to obtaining any and all zoning, planning, or other land use approvals required by the municipality in which the proposed antenna is to be located, all necessary approvals required by the Morris County Planning Board, if any, and a County Right of Way Occupancy Permit. Developer shall keep and maintain any and all required permits, licenses, certificates, or consents from Governmental Authorities as are necessary in order to continue to use and maintain the Antenna and/or Antenna Pole attached to or installed on the property of third parties and to properly carry-out and fulfill any obligation(s) under this Agreement, and shall comply with all Applicable Laws in performing any act of fulfilling any obligation arising from, directly or indirectly, this Agreement. All costs associated with obtaining such required agreements, permits, licenses, certificates, and/or consents from Governmental Authorities, including but not limited to legal, engineering, and administrative costs, will be borne solely by Developer.

(c) Without limiting the generality of the foregoing or any other obligation set forth herein, Developer shall comply with all applicable Federal, State, County, and Municipal laws,

statutes, rules, and regulations, including but not limited to (i) the County's Rules, Regulations Governing Road Opening, Right of Way Occupancy, and Storage Permits, (ii) the County's Land Development Standards, and (iii) requirements of the National Electrical Safety Code for proper bonding, grounding, clearances, guying, anchoring, and installing of its Antenna or Antenna Pole.

(d) Prior to commencement of any Development, Developer shall submit all construction permits required by law to the County Engineer.

(e) Developer warrants that its Antenna and/or Antenna Pole will be maintained in good operating condition as defined by any applicable industry standards, and in accordance with any and all Applicable Laws. Developer agrees that all required maintenance shall be performed by Developer personnel or by contractors acceptable to Developer. Except in the event of an emergency, maintenance work will be performed within four (4) business days following Developer's notification requesting such maintenance.

(f) The County reserves the right at all times to reasonably specify the type and methods of design, construction, and maintenance of the Antenna and/or Antenna Pole.

(g) The Developer agrees to pay to the County the reasonable costs incurred by the County for administrative, engineering, and or legal review, analysis and preparation of documents related to the Developer's application for a Right of Way Occupancy Permit. **[JIM – should we add a time period for payment following the delivery of an invoice?].**

ARTICLE V TERMINATION

(a) Notwithstanding anything to the contrary set forth in this Agreement, Developer or the County may cancel this Agreement in whole or in part as applicable to any location at which there is an attachment to the property of third parties upon sixty (60) days prior written notice, or as otherwise set forth herein, if: (a) Developer is unable to obtain and/or maintain any permits, licenses, certificates, and/or consents that may be required by any Governmental Authority and which are necessary in order to attach, use, and maintain the relevant Antenna and/or Antenna Pole, and/or (b) the location is or becomes unacceptable or unnecessary in Developer's sole discretion due to Developer's design or engineering specifications for its Antenna and/or Antenna Pole or due to any engineering specifications or other requirements imposed by the County under this Agreement.

(b) Notwithstanding anything to the contrary set forth in this Agreement, the County may terminate this Agreement immediately, following any applicable notice and cure provisions expressly set forth herein, if Developer fails to comply with the provisions of this Agreement. Any termination of one Agreement shall not affect the validity or existence of any other Agreements.

(c) Within thirty (30) days termination or expiration of this Agreement, Developer will cause to be removed by Developer personnel, or Developer approved contractors, its

antennas, antenna poles, equipment, attachments, facilities, and other improvements and Developer shall restore the Right of Way to its original condition.

(d) Upon Developer's termination of this Agreement as provided in this Article or elsewhere in this Agreement, all Developer's obligations to the County shall terminate except for Developer's obligations as set forth in Articles 5, 8, and 12 hereunder.

ARTICLE VI FORCE MAJEURE

Neither Party shall be liable for any delay or failure in performance under this Agreement to the extent that such failure or delay is caused by acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, or other environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation or common carriers, and other matters beyond the control of the Party. If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take reasonable steps to correct and mitigate the force majeure condition and its effects. During the pendency of the force majeure, the duties of the Parties under this Agreement which are affected by the Force Majeure condition shall be suspended and shall resume without liability thereafter.

ARTICLE VII ASSIGNMENT

Developer will not assign or transfer this Agreement without the prior written consent of the County, which consent will not be unreasonably withheld except that Developer may assign this Agreement to any party controlling, controlled by, or under common control with Developer without the County's consent, or to any party which acquires all or substantially all of the assets of Developer in the market as defined by the Federal Communications Commission in which the County is located ("Permitted Transfer"), provided, that within a reasonable time after such assignment, Developer shall furnish the County with written notice of such assignment certifying that such assignee assumes all of the Developer's obligations hereunder as set forth herein. Developer shall remain principally responsible for the performance of any obligations set forth herein, notwithstanding any assignment hereunder, other than a Permitted Transfer.

ARTICLE VIII INDEMNIFICATION AND INSURANCE

(a) Definitions

For purposes of this Article VIII only, the following definitions shall apply:

"Developer" shall mean Developer, its successors, assigns, subcontractors, agents, servants, officers, employees, designees, volunteers, guests and invitees (collectively "Developer"). For purposes of this Article VIII, "subcontractors" is expressly not limited to

those persons or entities that may have entered into a written agreement with Developer, but includes any person or entity undertaking any work or performance for the benefit of Developer in furtherance of the purposes of this Agreement.

The “County” shall mean the County of Morris, its elected officials, officers, Freeholders, employees, professionals, volunteers, servants and agents, as well as any of its agencies, departments, divisions, bureaus, or offices (collectively, the “County”).

“LOSS” shall include, but is not limited to claims, liabilities, duties, obligations, debts, demands, allegations, causes, causes of action, counterclaims, cross-claims, liens, suits, dues, sums, and sums of money, bills, accounts, reckonings, bonds, specialties, rights of indemnity, rights of subrogation, injunctive relief, exonerations, covenants, contracts, controversies, agreements, promises, acts, omissions, trespasses, variances, damages, judgments, compensations, contributions, set-offs, reimbursements, restitution, extents, costs, expenses, penalties, damages, settlement costs, charges, professional fees, exposures, executions, and attorneys’ fees, of any nature whatsoever, whether in law, in equity, in admiralty, or otherwise, whether accrued or unaccrued, known or unknown.

(b) Indemnity

Developer shall defend, indemnify and hold the County harmless from and against any LOSS arising out of, relating to, or resulting from Developer’s performance pursuant to this Agreement, including, without limitation, any LOSS involving a request for relief of any kind, whether at law or in equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or any other cause of action or relief of any sort, including claims, allegations or demands for punitive damages, declaratory judgment, injunctive relief, bodily injury, medical monitoring, mental injury or anguish, emotional distress, property damage, loss of use of property, or diminution of value of property, whether accrued or unaccrued, known or unknown.

Developer hereby agrees to assume the entire responsibility and liability for any and all LOSS caused by or resulting from or arising out of any alleged or actual act or omission, neglect or negligence, or agreement on the part of the Developer which in any way touches or concerns this Agreement, whether covered by the insurance specified elsewhere herein or not. It is hereby specifically stated to be the intention of Developer and the County to have this provision and these terms interpreted in the broadest legally permissible fashion in favor of the County, and in such way as to provide the County with the greatest possible protection. It is anticipated by Developer and the County that this protection will be provided by the purchasing of appropriate insurance, but the non-availability of insurance shall not relieve Developer of the obligations set forth herein.

Without any limitation to the obligations set forth herein, Developer further agrees that Developer’s defense, indemnification and hold harmless obligations to the County (1) shall extend to LOSS involving any alleged or actual imputed or vicarious liability of Developer that arises out of any alleged or actual act, negligence, omission or agreement of the County, Developer or any person or entity for whom Developer may be responsible; (2) shall extend to

LOSS as to which Developer and the County may each be alleged to be or found jointly, severally, or concurrently liable (as between them or them and others) for negligence or other fault or liability arising from the same state of facts; (3) shall extend to any LOSS where the County is alleged to be or found negligent and/or at fault and is or may be held liable to any other party, and the fact that the County is alleged to be or may be held liable for such LOSS shall not abrogate the obligations of Developer pursuant to this Article VIII; and (4) at the County's discretion and demand, shall include Developer assuming the defense of the County (including all attorneys' fees and litigation costs) using attorneys acceptable to the County, which acceptance shall not be unreasonably withheld. The only exception to the scope of Developer's indemnification and hold harmless obligations to the County is where New Jersey Statute(s) prohibit indemnification for its sole negligence; but this will not abrogate Developer's defense obligations to the County, which shall exist up to such time as there is a finding by a judge or jury that the County's liability is due entirely to its sole negligence.

(c) Insurance

Developer shall provide, at its own cost and expense, the following insurance to the County, which insurance shall be evidenced by certificates, declaration pages, and endorsements as required by the County. The insurance shall be maintained in full force and effect covering a period matching the Term of this Agreement as set forth in Article VIII herein. It is specifically acknowledged and agreed that the obligations imposed on Developer to provide such insurance and documentation as specified in this Article VIII are material terms and conditions of this Agreement, and the County may, at its discretion, direct Developer to cease all operations and/or suspend any permits or permissions under this Agreement until the required insurance and documentation are provided.

The insurance shall be provided by an entity authorized to write insurance in the State of New Jersey and rated "A:VII" or better by A.M. Best.

Certificates of insurance, declaration pages and endorsements shall be delivered to the County of Morris, Risk Management Division, prior to the commencement of the project identified in Article II herein. However, failure to obtain the required documents prior to the work beginning shall not waive Developer's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by this Agreement at any time. All certificates of insurance shall state that the County is named as "an additional insured" under all required insurance policies. Filing of the certificates of insurance, declarations pages and endorsements with the County shall not be deemed approval by the County of the insurance or documentation provided or listed. The County reserves all rights to contest, challenge, reject or otherwise dispute the validity of insurance or documentation provided by Developer. Filing of the certificates of insurance, declarations pages and endorsements does not in any way abrogate Developer's indemnity obligations as set forth in this Article VIII. Developer's indemnity obligations are independent of the requirement to maintain insurance.

The insurance obligations under this Article VIII shall be: (1) all the insurance coverages and/or limits carried by and/or available to the Developer; or (2) the minimum insurance

coverage requirements and/or minimum required limits shown in this Agreement, whichever is greater. Any insurance coverage or limits in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given LOSS, shall be available to the County. No representation is made that the insurance requirements of this Agreement are sufficient to cover the obligations of the Developer under this Agreement.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage must be at least as broad as:

- 1) Worker's Compensation and Employers Liability Insurance. Developer shall provide proof of Worker's Compensation Insurance and be in compliance with the Workers' Compensation Law of the State of New Jersey. In the event any work is sublet, Developer shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Developer's Workers' Compensation Insurance. Employer's Liability: Limit of liability shall be a minimum of \$500,000, in accordance with New Jersey Statute.
- 2) Comprehensive General Liability. Comprehensive general liability ("CGL") insurance ISO form CG 00 01, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate applies, either the general aggregate limit shall apply separately to this project/location (using ISO forms CG 25 03 or CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 3) Automobile Liability. Automobile liability insurance covering claims for bodily injury and property damage arising from all owned, hired and non-owned vehicles with limits of not less than \$1,000,000 combined single limit.

The County shall be named as an "additional insured" utilizing a form at least as broad as Form CG 20 10 11 85 or, if not available, through the addition of both CG 20 10 10 01 or earlier editions, and CG 20 37 10 01.

For any LOSS related to this Agreement, Developer's insurance shall be primary coverage at least as broad as CG 20 10 04 13 as respects the County. Any insurance or self-insurance maintained by the County shall be excess of all insurance policies maintained by the Developer (including primary, umbrella and excess policies) and shall not contribute with Developer's insurance.

Developer hereby grants to the County a waiver of any right to subrogation which any insurer of Developer may acquire against the County by virtue of the payment of any LOSS under such insurance. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Self-insured retentions must be declared to and approved by the County. The County, at its discretion, may require Developer to purchase coverage with no retention, a lower retention, or provide proof of the ability to cover any LOSS. At the County’s discretion, it may require that Developer’s insurance policy be endorsed to provide that the self-insured retention may be satisfied by Developer or the County. In the event that the County satisfies any or all of any retention, Developer will immediately reimburse the County in the amount paid, plus interest assessed from the date of payment by the County to the date of reimbursement by Developer.

Developer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Developer shall ensure that the County is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide the County ongoing and completed operations coverage utilizing the same forms as Developer or forms at least as broad as the insurance required to be provided to the County by Developer.

Each insurance policy required above shall provide that coverage shall not be cancelled, except with prompt notice to the County. If Developer receives notice of cancellation or material change in the policies, notice thereof shall be given to the County Purchasing Agent by certified mail, return receipt requested. All such notices shall name the County.

**ARTICLE VIII
NOTICES**

All notices, requests, demands, and other communications hereunder (other than routine operational communications) shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by recognized overnight courier. All notices or other communications under this Agreement shall be sufficient if addressed as follows:

To the County: County of Morris
PO Box 900, 10 Court Street
Morristown, NJ 07963-0900
Attn: John Bonanni, County Administrator
cc John Napolitano, County Counsel

To Developer: **[To Be Added]**

COUNTY's emergency contact: COUNTY Administrator 973-285-6040
DEVELOPER's emergency contact:
Network Operations Center: 1-800-264-6620

ARTICLE IX DEFAULT

If either Party is in default under this Agreement for a period of sixty (60) days following receipt of written notice from the non-defaulting Party, then the non-defaulting Party may pursue any remedies available to it against the defaulting Party under applicable law, including, but not limited to, the right to terminate this Agreement. If the default may not reasonably be cured within a sixty (60) day period, this Agreement may not be terminated if the defaulting Party commences action to cure the default within such sixty (60) day period and proceeds with due diligence to fully cure the default.

ARTICLE X ENVIRONMENTAL HEALTH AND SAFETY

Developer shall comply with all Applicable Laws governing the Development or Developer's protection of human health, safety, and the environment as it pertains to the Developer's operation of any Antenna and/or Antenna Pole.

ARTICLE XI MISCELLANEOUS

(a) This Agreement shall apply to and bind the heirs, successors, executors, administrators, and permitted assigns of the Parties to this Agreement.

(b) This Agreement is governed by the laws of the State of New Jersey.

(c) This Agreement (including any and all exhibits hereto) constitutes the entire agreement between the Parties and supersedes all prior written and verbal agreements, representations, promises, or understandings between the Parties; any amendments to this Agreement must be writing and executed by both Parties.

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

(e) Should the County be the prevailing Party in any action or proceeding to enforce the terms of this Agreement, the County is entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. Should the County be the non-prevailing Party, under no circumstances may the prevailing Party receive reasonable attorney's fees and other reasonable enforcement costs and expenses from the County.

(f) The rights granted by County to Developer pursuant to this Agreement shall be exercised by the Developer subject to any Applicable Laws affecting the County or Developer.

(g) Developer acknowledges that the County may heretofore have entered into agreements and arrangements with third parties regarding the Right of Way covered hereby. All rights and privileges granted to Developer hereunder shall be subject to such agreements and arrangements. Nothing contained herein is intended to limit the County's right to enter into agreements and arrangements with other third parties regarding the Right of Way covered hereby.

(h) The article, section, and exhibit headings contained in this Agreement are solely for the purpose of reference, and are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

(i) To the extent that there is any conflict between the terms of this Agreement and the terms of the Right of Way Occupancy Permit, this Agreement shall control, and nothing set forth in the Right of Way Occupancy Permit shall alter, supersede, or otherwise invalidate any provision of this Agreement.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Witness/Attest:

THE COUNTY OF MORRIS

Print:
Title:

Date: _____

By _____

Date: _____

Witness/Attest:

DEVELOPER

Print:
Title:

Date: _____

By _____

Date: _____

STATE OF NEW JERSEY)
) SS
County OF MORRIS)

I certify that on _____, 20__, _____, personally came before me and this person acknowledged under oath to my satisfaction that:

- (a) this person is the **Clerk** of the Morris County Board of Chosen Freeholders;
- (b) this person is the attesting witness to the signing of this Agreement by _____, the Freeholder Director;
- (c) this Agreement was signed and delivered by the Morris County Board of Chosen Freeholders as its voluntary act dully authorized by a proper resolution of the Board.

Signed and Sworn to before me on

Notary Public

NOTARY ACKNOWLEDGMENT

State of _____)

)SS

County of _____)

On this ____ day of _____, 20__, before me personally appeared: _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that ____ (he/she) executed the same in ____ (his/her) capacity as _____ (position), that by ____ (his/her) signature on the instrument, the individual, or the entity, _____ (company), upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____, County of _____, State of _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and state of the day and year first above written.

Notary Public of _____

EXHIBIT A
PROJECT DRAWINGS

ATTACHMENT A

ATTACH REQUIRED CONSENTS AND/OR APPROVALS

ATTACHMENT B

ATTACH PROJECT PLAN AND DRAWINGS

