



Small Cell Pole Attachment Permit General Conditions

Public Works – Engineering Division

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1. INSTALLATION OF EQUIPMENT

Permits

- a. Pole Attachment Permit: Prior to the approval of installation of equipment, APPLICANT shall submit to the City Engineer or designee, a sketch of the proposed location for the new equipment ("Equipment Plan"). The City Engineer or designee will review the sketch to determine whether the wireless support structure is owned by the City.
- b. The Pole Attachment Permit Application shall include the following:
 - *Completed permit application and fee;
 - *Performance bond on file and proof of insurance;
 - *Construction plans as described in section below;
 - *Structural study described in section below;
 - *Design plan and/or route for backhaul facilities, signed by a P.E.; and
 - *Copy of permit and agreement from wireless support structure owner if owned by an agency other than the City of Brooklyn Center (if applicable).
- c. APPLICANT must obtain a radio frequency interference study carried out by an independent professional radio frequency engineer ("RF Engineer") showing that APPLICANT's intended use will not interfere with any existing, licensed communications facilities, as well as CITY's licensed and unlicensed communications facilities, which are located on or near the structure. The RF Engineer shall provide said evaluation no later than forty-five (45) days after frequencies are provided by CITY. APPLICANT shall not transmit or receive radio waves at the wireless support structure until such evaluation has been satisfactorily completed.
- d. Upon request of CITY, APPLICANT shall hire an RF Engineer to conduct a radio frequency emissions survey of the wireless support structure following APPLICANT's initial RF transmissions. APPLICANT shall be responsible for all costs of such survey.
- e. APPLICANT shall implement all measures at the transmission site required by FCC regulations, including but not limited to posting signs and markings. CITY shall cooperate with APPLICANT to fulfill its Radio Frequency exposure obligations. CITY agrees that in the event any future party causes the entire site to exceed FCC Radio Frequency radiation limits, as measured on the wireless support structure, CITY shall hold such future party liable for all such later- arising non-compliance.
- f. Other City permits: In addition to the Pole Attachment Permit, which is only approved to attach equipment to a wireless support structure, the APPLICANT must apply for any additional permits for all appurtenant equipment or facilities required for the Pole Attachment Permit. Said permits may include, not necessarily by limited to: Right-of-Way; Electrical, Stormwater, etc.
- g. Other applicable permits: It is the APPLICANT's responsibility to determine if permits are required by governmental agencies and apply for those permits.
- h. Applicable fees for all permits shall be borne by the APPLICANT and the APPLICANT shall be bound by the requirements of said permits.

Construction Plans

- a. For Pole Attachment Permit application, or additions thereto, APPLICANT shall provide the City Engineer or designee one (1) set of construction plans ("Construction Plans") consisting of the following:
 - * CAD drawings showing the location and materials of all planned installations, including field verified existing utilities;
 - * Structural Study: Complete an analysis of the existing wireless support structure or replacement pole to determine if the structure/pole has sufficient strength to support the small wireless facility which is propose to be attached/affixed to it. Study shall have affixed to it the signature of the APPLICANT's Engineer who shall be licensed in Minnesota pursuant Minnesota Rule 1800.4200 and Minnesota Statutes Chapter 326.
 - * Construction Specifications and Product Specifications for all planned installations;
 - * Diagrams and shop drawings of proposed small wireless facility; and
 - * A complete and detailed inventory of all equipment and personal property of APPLICANT actually placed on the wireless support structure. CITY retains the right to survey the installed equipment.

Construction plans shall be easily readable, no construction shall commence until permit is granted by the City Engineer or designee. Final plans shall have affixed to them the signature of the APPLICANT's Engineer who shall be licensed in Minnesota pursuant Minnesota Rule 1800.4200 and Minnesota Statutes Chapter 326.

Construction Inspection

All construction activity shall be subject to inspection and approval by the CITY's representative(s). Inspection will be performed at project completion. APPLICANT shall be solely responsible for all costs, in excess of those included in the permit fee, associated with said inspection and approval of construction work by CITY.

Damage by APPLICANT

Any damage to the right-of-way, or CITY's equipment thereon caused by APPLICANT's permitted installation or operations shall be repaired or replaced at APPLICANT's expense and to CITY's reasonable satisfaction.

As-Built Drawings ("As-Built" or "As-Built")

Within thirty (30) days after APPLICANT activates the small wireless facility, APPLICANT shall provide City with an As-Built drawing in CAD format consisting of As-Built drawings of the small wireless facility installed on each permitted location and any improvements installed on the wireless support structure, which shall show the actual location of all equipment and improvements. Said drawings shall be accompanied by a complete inventory of all equipment and Antenna Facilities.

2. MAINTENANCE AND REPAIR OF EQUIPMENT

Emergency Maintenance and Repair

The CITY retains the right to shut off power for the Antenna Facilities at the source in any and all cases of emergency, as determined by the CITY.

Wireless Support Structure Reconditioning and Repair

The CITY reserves the right to take any action it deems necessary, in its sole and reasonable discretion, to repair, maintain, alter, or improve the right-of-way in connection with CITY'S operations ("ROW Work"). From time to time, CITY paints, reconditions, or otherwise improves or repairs the wireless support structure in a substantial way ("Reconditioning Work"). Applicant shall cooperate with CITY to carry out ROW and Reconditioning Work.

Except in cases of emergency, prior to commencing ROW or Reconditioning Work, CITY shall provide APPLICANT with not less than thirty (30) days prior written notice thereof. City will send notice to the address provided on this permit application. It shall be the sole responsibility of APPLICANT to provide adequate measures to cover or otherwise protect APPLICANT's Antenna Facilities from the consequences of such activities, including but not limited to paint and debris fallout. CITY reserves the right to require APPLICANT to remove all Antenna Facilities from the wireless support structure and right-of-way during ROW or Reconditioning Work.

During CITY's ROW or Reconditioning Work, APPLICANT may request a mobile site on the right-of-way. If site will not accommodate mobile equipment, it shall be APPLICANT's responsibility to locate auxiliary sites.

Relocation of Wireless Support Structure

When directed by the CITY a right-of-way user shall relocate all of its facilities within the rights-of-way according to City of Brooklyn Center Code, Section 25-1022, RELOCATION OF EQUIPMENT, as amended from time to time.

3. CONDITION OF WIRELESS SUPPORT STRUCTURE

The CITY will keep and maintain the wireless support structure in good repair as required for the CITY's intended use and in the ordinary course of business as the CITY budget permits. CITY makes no guarantee as to the condition of any wireless support structures with regard to APPLICANT's intended use.

APPLICANT shall, at its own cost and expense, maintain the small wireless facility in good and safe condition, and in compliance with applicable fire, health, building and other codes. The APPLICANT shall obtain from the CITY any and all permits required for the purposes of maintaining the installation. Applicable fees for any permits shall be borne by the APPLICANT and the APPLICANT shall be bound by the requirements of said permits.

4. INDEMNIFICATION

APPLICANT shall, to the extent permitted by law, indemnify and hold CITY harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the APPLICANT, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the CITY, or its employees, contractors or agents.

5. INSURANCE AND BOND

- a. Worker's Compensation: The APPLICANT must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury by disease, each employee.

- b. **General Liability:** The APPLICANT must maintain occurrence form commercial general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage-broad form and personal injury, for the hazards of Premises/Operation, broad form contractual liability, property damage liability and independent contractors. The APPLICANT must maintain aforementioned commercial general liability coverage with limits of liability not less than \$1,500,000 for each occurrence; \$3,000,000 minimum general aggregate and \$2,000,000 products and completed operations aggregate. These limits may be satisfied by the commercial general liability coverages. APPLICANT will maintain Completed Operations coverage for a minimum of two (2) years after the construction is completed.
- c. **Automobile Liability:** The APPLICANT must carry Automobile Liability coverage. Coverage shall afford total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,500,000 per accident. The liability limits may be afforded under the Commercial Policy, or in combination with an Umbrella or Excess Liability Policy provided coverage of rides afforded by the Umbrella Excess Policy are not less than the underlying Commercial Auto Liability coverage. Coverage shall be provided by Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles. The Commercial Automobile Policy shall include at least statutory personal injury protection, uninsured motorists and underinsured motorists coverages.
- d. **APPLICANT Property Insurance:** The APPLICANT must keep in force for the duration of the Permit a policy covering damages to its property in the right-of-way. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements. APPLICANT may self-insure this coverage and will provide written verification of said self-insurance to the CITY, prior to the execution of the Agreement.
- e. **Adjustment to Insurance Coverage Limits:** The APPLICANT's coverage limits set forth herein shall be increased every five (5) years following installation of the small wireless facility by twenty-five percent (25%) over the preceding five years. Alternatively, instead of such periodic coverage limit increases, during the entire term of this Agreement, APPLICANT may maintain an umbrella or excess liability insurance policy with a combined single limit of \$5,000,000.00 per occurrence, and CITY will be named as an additional insured under such policy.
- f. **Additional Insured- Certificate of Insurance:** The APPLICANT shall provide, prior to tenancy, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated B+ (VIII) or better), licensed to do business in the State of Minnesota, which includes all coverage required in this Section 5. **APPLICANT will name the CITY as an Additional Insured on the General Liability and Commercial Automobile Liability Policies.** Applicant shall provide at least thirty (30) days prior written notice to the CITY of cancelation or non-renewal of any required coverage that is not replaced. APPLICANT will provide a certificate of insurance naming the CITY as an Additional insured as required above with any new company.

- g. Defense and Indemnification: APPLICANT agree to defend, indemnify and hold harmless CITY and its elected officials, directors, officers, employees, agents and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by CITY or for which CITY may be liable in the performance of this Agreement, except those which arise solely from negligence or willful misconduct of CITY, its elected officials, directors, officers, employees, agents, representatives or contractors.

APPLICANT shall defend, indemnify and hold CITY, its agents, employees and officials harmless against all claims arising out of APPLICANT's use of the right-of-way, including its installation, operation, use, maintenance, repair, removal, or presence of APPLICANT's facilities, structures, equipment or other types of improvements, including Antenna Facilities, in the right-of-way except to the extent arising from or related to the sole negligence or willful misconduct of CITY, its elected officials, officers, employees, agents and representatives.

- h. The APPLICANT shall furnish the Owner, within ten (10) days after permit approval, a bond or bonds issued by an approved Surety company authorized to do business in the State of Minnesota, which bond shall be for the amount of the estimated value of work and shall extend for a period of one year after the date of final inspection and acceptance of the work by the Owner or through the end of the warranty period, whichever is longer.

- 1) The Performance Bond shall guarantee that the APPLICANT will perform each and every part of the permit requirement and agreements.

6. LIMITATION OF LIABILITY

CITY shall not be liable to the APPLICANT, or any of its respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. INTERFERENCE

APPLICANT agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of CITY or other users of the wireless support structure which existed on the wireless support structure prior to the date this Permit is issued. In the event any of APPLICANT's equipment causes such interference, and after CITY has notified APPLICANT in writing of such interference, APPLICANT will take all steps necessary to correct and eliminate the interference, including but not limited to, at CITY's option, having the APPLICANT power down its equipment and later power up its equipment for intermittent testing.

8. TERM OF PERMIT

The term of this permit is from the date the permit is issued by the City to the time the small wireless facility is no longer in use, unless earlier revoked due to a substantial breach of the terms and conditions of statute, ordinance, rule or regulation or any material condition of this permit.

9. REMOVAL AT END OF TERM OR UPON PERMIT REVOCATION

APPLICANT shall, within ninety (90) days after any termination of this Permit, remove its equipment, conduits, fixtures and all personal property and restore the wireless support structure to its original condition, reasonable wear and tear expected. CITY agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of APPLICANT shall remain the personal property of APPLICANT and APPLICANT shall have the right to remove the same at any time during the Term. All poles, conduit and pole boxes are and shall remain property of the CITY. If such time for removal causes APPLICANT to remain on the wireless support structure after termination, APPLICANT shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis until such time as the removal of the antenna structure, fixtures and all personal property are completed. All rentals paid prior to said termination date shall be retained by CITY.

10. ASSIGNMENT

This Permit, and all rights thereunder, may not be sold, assigned, or transferred without the written consent of the CITY, such consent not to be unreasonably withheld, conditioned or delayed.

11. CASUALTY

In the event of damage or casualty to the wireless support structure that cannot reasonably be expected to be repaired or replaced due to winter frost conditions, or if the structure is damaged so that such damage may reasonably be expected to disrupt APPLICANT's operations for more than 120 days, then APPLICANT may, provided CITY has not completed the restoration or replacement of the structure, terminate the Permit upon fifteen (15) days prior written notice to CITY.