

JEFFERSON COUNTY COMMISSION

West Virginia

Cell Tower Facilities

Maintenance and Removal Bond & Surety Policy

(Effective August 5, 2021)

1. **Cell Tower Maintenance and Removal Bond & Bond Surety:**

The Property Owner/Developer of a Cell Tower facility shall provide a Maintenance and Removal bond as a guarantee that the Cell Tower shall be maintained in both exterior appearance and structural soundness, and upon ceasing operation, the tower and all its appurtenances, shall be fully removed from the site and the site restored to its original condition. The Maintenance and Removal bond shall be secured with a form of surety acceptable to the County Commission.

2. **Removal Guidelines:**

In accordance with Article 4B, Section 4B.8 and 4B.9 of the Zoning Ordinance, the Property Owner/Developer shall insure that all parts of the cell tower facility shall be removed from the premises and the land shall be restored to a condition reasonably similar to its original condition prior to the installation of the cell tower facility. The pre-development condition shall be documented as part of the Site Plan submission.

Removal shall consist of the removal of the tower, all other structures, utilities, driveways, paved/gravel areas, fencing and any other items not present in the pre-development condition.

The site shall be graded to as close to the pre-developed condition as possible, and fully stabilized with a minimum of 70% grass growth.

3. **Bonding Arrangements & Bond Surety Amount:**

A. Maintenance and Removal bond arrangements shall only be made after Planning Commission approval of a project.

B. The Property Owner/Developer shall submit a bond surety in the amount of \$200,000.00, (*Two Hundred Thousand Dollars, and no cents,*) to the Bonding Administrator. The Bonding Administrator will then prepare the cell tower facility Maintenance and Removal bond documents (See Appendix A).

Upon notification by the Bonding Administrator that the cell tower facility Maintenance and Removal Bond agreement and bond surety documents are in order and in accordance with this Cell Tower Facilities Maintenance and Removal Bond & Surety Policy, the County Commission President or County Administrator may affix their signature to the bond; this will constitute acceptance by the County Commission of Jefferson County. All such action shall be reported to the County Commission as an agenda information item at their next meeting.

The Maintenance and Removal bond agreement and bond surety shall be in place prior to issuance of building permits for the project.

4. Length of Maintenance and Removal Bonds:

The Maintenance and Removal Bond must be in good standing for the life of the facility. The property owner shall insure that the bond is renewed, and that documentation of renewal is provided to the Bonding Administrator a minimum of 90 days prior to the expiration of the current bond.

The Chief County Engineer has the authority to reevaluate the bond amount if, in his judgement, the amount is no longer sufficient due to inflation or any other cost increases in associated work. Should the Chief County Engineer determine that the amount must be updated, the Property Owner/Developer shall provide a new surety in the required amount.

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

5. Approved Forms of Bond Surety:

A. Acceptable forms of bond surety are limited as follows:

1. Irrevocable Letter-of-Credit (see Appendix B) from any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
2. Cash-in-Escrow (see Appendix B) that is escrowed at any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or

3. Performance / Surety Bond (see Appendix B) from an acceptable surety bond provider shall be allowed.
 - B. Surety documents shall be formatted as required by this policy unless other format is approved by the County Administrator or the County Commission in writing.
6. Renewal of Bond Surety:

A. Irrevocable Letters-of-Credit:

The Property Owner/Developer, or surety provider, shall renew any letter of credit surety before it expires and provide evidence of renewal to the Bonding Administrator a minimum of ninety (90) calendar days prior to the surety's expiration date. It shall be the Owner/Developer's responsibility to monitor the expiration date and renew the letter of credit surety as required.

If within ninety (90) days in advance of the Termination Date, the County Commission has not been provided with a letter of credit in the place and stead of the Letter of Credit under the provisions of the Agreement, the County Commission of Jefferson County, West Virginia, may draw an amount not to exceed one-hundred percent (100%) of the amount of the Letter of Credit.

B. Cash-in-Escrow:

Surety in the form of cash-in-escrow will not have an expiration date and shall run for the duration of the Maintenance and Removal bond/project; but shall be subject to an increase in amount if deemed necessary by the Chief County Engineer.

C. Surety / Performance Bonds:

Surety in the form of a surety / performance bond shall be in effect for a minimum of five (5) years and shall automatically renew for additional minimum terms of five (5) years, unless, and until, the surety provider shall give ninety (90) calendar days prior written notice by certified mail, return receipt requested, to:

Bonding Administrator
Jefferson County Engineering Department
116 East Washington Street, Suite 100
Charles Town, WV 25414

...of its intent to terminate the surety bond at the expiration of the ninety (90) day period.

If within ninety (90) days in advance of the Termination Date, the County Commission has not been provided with a performance bond in the place and stead of the Performance Bond under the provisions of the Agreement, the County Commission of Jefferson County, West Virginia, may draw an amount not to exceed one-hundred percent (100%) of the amount of the surety.

7. Default by the Property Owner or Developer:

In accordance with Article 4B of the Zoning Ordinance, failure of the Lessee, Property Owner and/or Developer to meet and/or comply with this Policy may result in the County pursuing legal action pursuant to Article 3, Section 3.3 of the Zoning Ordinance, including legal action to have the Cell Tower Facility, or portions thereof as applicable, removed at the Property Owner's expense. The County may seek to recover its costs, legal fees, and legal expenses incurred to have the facility removed and the site restored in compliance with this Policy.

The Property Owner/Developer shall begin removal of the cell tower facility from the site within ninety (90) calendar days of ceasing operations. All work required to remove the cell tower facility from the site shall be completed within one-hundred and eighty (180) calendar days. Time is of the essence and failure to begin removal of the cell tower facility from the site, and/or finishing the work within the required time limits, shall constitute a default under the bonding agreement.

In the event the Property Owner/Developer defaults on their obligation to begin and/or complete the required removal work, the County Commission may "call-in" the bond and use the surety funds to remove the tower and associated appurtenances, and restore the site. All costs incurred by the County shall be recoverable and shall be valid charges against the surety. This includes, but is not limited to, all materials, equipment and labor costs, construction/demolition costs, administrative costs, engineering and construction management fees, legal fees, and insurance; and shall include costs incurred for both in-house and/or contracted services.

The County's financial obligation, with regard to the removal and restoration of the site, shall be limited to the amount of the surety funds available. The County shall not be obligated to fund any portion of the cost for the removal of a cell tower facility even if there are insufficient surety funds. The Property Owner and Developer shall assume all liability for all the costs.

The county commission shall have the right to place a lien on the property for any removal and restoration expenses not recouped from the surety funds by them; and/or to take legal action under the laws of West Virginia to recoup any costs from the Property Owner. The laws of the State of West Virginia shall take precedent and shall apply to all matters under the agreement.

8. Indemnification:

The Property Owner and Developer shall be required to indemnify, defend and hold harmless the Jefferson County Commission and its officers, directors, employees and/or agents from any action against them arising out of this Agreement and/or the removal and restoration of the cell tower facility, including by a third-party. The Property Owner and Developer shall bear all reasonable costs for legal defense against such actions.

The Property Owner and Developer, or their agent, acknowledges receipt of the Jefferson County Cell Tower Facilities – Maintenance and Removal Bond & Surety Policy.

(Cell Tower Facility Developer)

_____ (print name)

_____ (title)

_____ (company/organization name)

_____ (mailing address)

_____ (city) _____ (state) _____ (zip code)

Cell Tower Facility Developer Signature: _____ Date: _____

(Property Owner(s))

_____ (print name #1)

_____ (print name #2)

_____ (company/organization name)

_____ (mailing address)

_____ (city) _____ (state) _____ (zip code)

Owner Signature: _____ Date: _____

Owner Signature: _____ Date: _____

Appendix A

Maintenance and Removal Bond Agreement Forms

Form No.	Type	Surety Type	Project Type
A-1	Bond Agreement	Irrevocable Letter of Credit	Cell Tower Facility Maintenance and Removal
A-2	Bond Agreement	Cash-in-Escrow	Cell Tower Facility Maintenance and Removal
A-3	Bond Agreement	Surety / Performance Bond	Cell Tower Facility Maintenance and Removal

Form A-1

**AGREEMENT
CELL TOWER FACILITY MAINTENANCE AND REMOVAL BOND
(IRREVOCABLE LETTER-OF-CREDIT)**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Property Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ _____ *(Dollar amount in figures)*

_____ *(Dollar amount in words),*

for the maintenance of, and complete removal of the cell tower facility and associated appurtenances in accordance with the Cell Tower Maintenance and Removal Policy, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the cell tower facility project), with associated cell tower facility site improvements and appurtenances thereto, on (# of acres), more or less; and whereas the improvements allowed to be made on such project, as allowed by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if (Property Owner/Developer Name), the Property Owner and Developer shall well and truly complete the full removal of the cell tower facility, in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy, which is hereby made a part of this agreement, upon the ceasing of operations, or by the bond expiration date (bond expiration date), whichever shall come first, and pay all costs attendant thereto, and all done in compliance with all

county, state and federal laws and ordinances, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. Release of Bond:

The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. The County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above until being first provided with a written statement from the County Engineer certifying that the required removal of the cell tower facility has been satisfactorily completed in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy. The Property Owner/Developer shall provide to the County Engineer, upon request, documentation demonstrating the removal and restoration of the in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy. Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above, until the Maker has paid the County Commission of Jefferson County all fees for the processing of each bond release request, the review of documentation, and for each site inspection performed by the County Engineer to verify the requirements are met.

B. Bond Surety:

The Bond is secured by an Irrevocable Letter-of-Credit (LOC #), dated the _____ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Engineering, Planning & Zoning. By acceptance of the above irrevocable letter-of-credit as security, the following conditions shall apply:

1. The Irrevocable Letter-of-Credit in the amount of \$ _____ shall be attached to this Maintenance and Removal Bond Agreement and made a part hereof; and
2. The irrevocable letter of credit shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An irrevocable letter-of-credit shall remain in full force and effect as security for this Bond until such time as this Bond is released.

The Property Owner/Developer, or surety provider, shall renew any letter of credit surety before it expires and provide evidence of renewal to the Bonding Administrator a minimum of ninety (90) calendar days prior to the surety's expiration date. It shall be the Owner/Developer's responsibility to monitor the expiration date and renew the letter of credit surety as required.

If within ninety (90) days in advance of the Termination Date, the County Commission has not been provided with a letter of credit in the place and stead of the Letter of Credit under the provisions of the Agreement, the County Commission of Jefferson County, West Virginia, may draw an amount not to exceed one-hundred percent (100%) of the amount of the Letter of Credit.

EXPIRATION DATES FOR ALL LETTERS-OF-CREDIT SHALL BE EITHER JANUARY 15TH OR JULY 15TH OF A GIVEN YEAR.

4. Signed draft requests against the irrevocable letter-of-credit will be made by the Jefferson County Commission (beneficiary) for one or both of the two following reasons:

A. Failure on the part of (Applicant/Developer Name & Cell Tower Facility Name), to complete the full removal of the cell tower facility according to the terms of this bond.

B. Failure on the part of (Applicant/Developer Name & Cell Tower Facility Name), to renew the irrevocable letter-of-credit ninety (90) calendar days prior to the expiration date.

5. Drafts made against the irrevocable letter-of-credit, for reason 4A above, by the Jefferson County Commission, will be used exclusively for the purpose of the removal of the cell tower facility herein required.

6. Drafts made against the irrevocable letter-of-credit, for reason 4B above, will be escrowed with a local bank or savings and loan association by the Jefferson County Commission and will be held, during the life of this bond to guarantee the removal of the cell tower facility herein required.

C. Length of Maintenance and Removal Bonds:

The Maintenance and Removal Bond must be in good standing for the life of the facility. The property owner shall insure that the bond is renewed, and that documentation of renewal is provided to the Bonding Administrator a minimum of 90 days prior to the expiration of the current bond.

The Chief County Engineer has the authority to reevaluate the bond amount, if it, in his judgement, the amount no longer is sufficient, due to inflation, or any

other increases in associated work. Should the Chief County Engineer determine that the amount must be updated, the Property Owner/Developer shall provide a new surety in the required amount.

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

D. Default by the Property Owner and/or Developer:

In accordance with Article 4B of the Zoning Ordinance, failure of the Lessee, Property Owner and/or Developer to meet and/or comply with this Policy may result in the County pursuing legal action pursuant to Article 3, Section 3.3 of the Zoning Ordinance, including legal action to have the Cell Tower Facility, or portions thereof as applicable, removed at the Property Owner's expense. The County may seek to recover its costs, legal fees, and legal expenses incurred to have the facility removed, and the site restored in compliance with this Policy.

The Property Owner/Developer shall begin removal of the cell tower facility site within ninety (90) calendar days of ceasing operations. All work required to remove the cell tower facility site shall be completed within one-hundred and eighty (180) calendar days. Time is of the essence and failure to begin removal of the site, and/or finishing the work within the required time limits, shall constitute a default under the bonding agreement.

In the event the Property Owner/Developer defaults on their obligation to begin and/or complete the required removal work, the County Commission may "call-in" the bond and use the surety funds to remove the tower and associated

appurtenances, and restore the site. All costs incurred by the County shall be recoverable and shall be valid charges against the surety. This includes, but is not limited to, all materials, equipment and labor costs, construction/demolition costs, administrative costs, engineering and construction management fees, legal fees, and insurance; and shall include costs incurred for both in-house and/or contracted services.

The County's financial obligation, with regard to the removal and restoration of the site, shall be limited to the amount of the surety funds available. The County shall not be obligated to fund any portion of the cost for the removal of a cell tower facility even if there are insufficient surety funds. The Property Owner and Developer shall assume all liability for all the costs.

The county commission shall have the right to place a lien on the property for any removal and restoration expenses not recouped from the surety funds by them; and/or to take legal action under the laws of West Virginia to recoup any costs from the Property Owner. The laws of the State of West Virginia shall take precedent and shall apply to all matters under the agreement.

E. Indemnification:

The Property Owner and Developer shall be required to indemnify, defend and hold harmless the Jefferson County Commission and its officers, directors, employees and/or agents from any action against them arising out of this Agreement and/or the removal and restoration of the cell tower facility, including by a third-party. The Property Owner and Developer shall bear all reasonable costs for legal defense against such actions.

F. Severability:

Any provision or part of the Agreement documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Property

Owner and Developer, who agree that the Agreement documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

The Agreement shall supersede all prior or contemporaneous negotiations, commitments, agreements, writings or policy with respect to the subject matter hereof.

G. Successors and Assigns:

The Property Owner and Developer each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.

(Remainder of Page Intentionally Left Blank)

This AGREEMENT shall be effective (month, date & year), witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

(Property Owner Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

COUNTY COMMISSION OF JEFFERSON COUNTY,
WEST VIRGINIA

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

Form A-2

**AGREEMENT
CELL TOWER FACILITY MAINTENANCE AND REMOVAL BOND
(CASH-IN-ESCROW)**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Property Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ _____ *(Dollar amount in figures)*

_____ *(Dollar amount in words),*

for the maintenance of, and complete removal of the cell tower facility and associated appurtenances, in accordance with the Cell Tower Maintenance and Removal Policy, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the cell tower facility project), with associated cell tower facility site improvements and appurtenances thereto, on (# of acres), more or less; and whereas the improvements required to be made on such project, as allowed by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if (Property Owner/Developer Name), the Property Owner and Developer shall well and truly complete the full removal of the cell tower facility, in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy, which is hereby made a part of this agreement – upon the ceasing of operations, or by the bond expiration date (bond expiration date), whichever shall come first, and pay all costs attendant thereto, and all done in compliance with all

county, state and federal laws and ordinances, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. Release of Bond:

The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. The County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above until being first provided with a written statement from the County Engineer certifying that the required removal of the cell tower facility has been satisfactorily completed in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy. The Property Owner/Developer shall provide to the County Engineer, upon request, documentation demonstrating the removal and restoration of the in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy.

Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above, until the Maker has paid the County Commission of Jefferson County all fees for the processing of each bond release request, the review of documentation, and for each site inspection performed by the County Engineer to verify the requirements are met.

B. Bond Surety:

The Bond is secured by an Escrow Agreement, dated the _____ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Engineering, Planning & Zoning. By acceptance of the above escrow agreement as security, the following conditions shall apply:

1. The Escrow Agreement shall be in the amount of \$_____ and shall be attached to this Maintenance and Removal Bond Agreement and made a part hereof; and
2. The Escrow Agreement shall be clearly written to provide the beneficiary with direct and immediate access to the funds upon submission by the beneficiary of a written and signed draft request; and
3. An Escrow Agreement shall remain in full force and effect as security for this Bond until such time as the Bond is released.
4. Signed draft requests against the Escrow Agreement will be made by the Jefferson County Commission (beneficiary) for failure on the part of (Applicant/Developer Name & Cell tower Facility Name), to maintain, or complete the full removal and restoration of the cell tower facility according to the terms of this bond.
5. Drafts made against the Escrow Agreement, by the Jefferson County Commission, will be used exclusively for the removal of the cell tower facility herein required.

C. Length of Maintenance & Removal Bonds:

The Maintenance and Removal Bond must be in good standing for the life of the facility. The property owner shall insure that the bond is renewed, and that documentation of renewal is provided to the Bonding Administrator a minimum of 90 days prior to the expiration of the current bond.

The Chief County Engineer has the authority to reevaluate the bond amount, if it, in his judgement, the amount no longer is sufficient, due to inflation, or any other increases in associated work. Should the Chief County Engineer determine that the amount must be updated, the Property Owner/Developer shall provide a new surety in the required amount

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

D. Default by the Property Owner and/or Developer:

In accordance with Article 4B of the Zoning Ordinance, failure of the Lessee, Property Owner and/or Developer to meet and/or comply with this Policy may result in the County pursuing legal action pursuant to Article 3, Section 3.3 of the Zoning Ordinance, including legal action to have the Cell Tower Facility, or portions thereof as applicable, removed at the Property Owner's expense. The County may seek to recover its costs, legal fees, and legal expenses incurred to have the facility removed and the site restored in compliance with this Policy.

The Property Owner/Developer shall begin removal of the cell tower facility site within ninety (90) calendar days of ceasing operations. All work required to remove the cell tower facility site shall be completed within one-hundred and eighty (180) calendar days. Time is of the essence and failure to begin

removal of the site, and/or finishing the work within the required time limits, shall constitute a default under the bonding agreement.

In the event the Property Owner/Developer defaults on their obligation to begin and/or complete the required removal work, the County Commission may “call-in” the bond and use the surety funds to remove the tower and associated appurtenances, and restore the site. All costs incurred by the County shall be recoverable and shall be valid charges against the surety. This includes, but is not limited to, all materials, equipment and labor costs, construction/demolition costs, administrative costs, engineering and construction management fees, legal fees, and insurance; and shall include costs incurred for both in-house and/or contracted services.

The County’s financial obligation, with regard to the removal and restoration of the site, shall be limited to the amount of the surety funds available. The County shall not be obligated to fund any portion of the cost for the removal of a cell tower facility even if there are insufficient surety funds. The Property Owner and Developer shall assume all liability for all the costs.

The county commission shall have the right to place a lien on the property for any removal and restoration expenses not recouped from the surety funds by them; and/or to take legal action under the laws of West Virginia to recoup any costs from the Property Owner. The laws of the State of West Virginia shall take precedent and shall apply to all matters under the agreement.

E. Indemnification:

The Property Owner and Developer shall be required to indemnify, defend and hold harmless the Jefferson County Commission and its officers, directors, employees and/or agents from any action against them arising out of this Agreement and/or the removal of the cell tower facility, including by a third-party. The Property Owner and Developer shall bear all reasonable costs for legal defense against such actions.

F. Severability:

Any provision or part of the Agreement documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Property Owner and Developer, who agree that the Agreement Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

The Agreement shall supersede all prior or contemporaneous negotiations, commitments, agreements, writings or policy with respect to the subject matter hereof.

G. Successors and Assigns:

The Property Owner and Developer each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.

(Remainder of Page Intentionally Left Blank)

This AGREEMENT shall be effective (month, date & year), witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

(Property Owner Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

COUNTY COMMISSION OF JEFFERSON COUNTY,
WEST VIRGINIA

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

Form A-3

**AGREEMENT
CELL TOWER FACILITY MAINTENANCE AND REMOVAL BOND
(SURETY / PERFORMANCE BOND)**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Property Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ _____ *(Dollar amount in figures)*

_____ *(Dollar amount in words),*

for the maintenance of, and complete removal of the cell tower facility and associated appurtenances in accordance with the Cell Tower Maintenance and Removal Policy, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the cell tower facility project), with associated cell tower facility site improvements and appurtenances thereto, on (# of acres), more or less; and whereas the improvements required to be made on such project, as allowed by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if (Property Owner/Developer Name), the Property Owner and Developer shall well and truly complete the full removal of the cell tower facility, in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy, which is hereby made a part of this agreement, upon the ceasing of operations, or by the surety / performance bond expiration date (bond expiration date), whichever shall come first, and pay all costs attendant thereto, and all done in

compliance with all county, state and federal laws and ordinances, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. Release of Bond:

The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. The County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above until being first provided with a written statement from the County Engineer certifying that the required removal of the cell tower facility has been satisfactorily completed in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy. The Property Owner/Developer shall provide to the County Engineer, upon request, documentation demonstrating the removal and restoration of the in accordance with the Jefferson County Cell Tower Maintenance and Removal Bond Policy.

Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provision 1 above, until the Maker has paid the County Commission of Jefferson County all fees for the processing of each bond release request, the review of documentation, and for each site inspection performed by the County Engineer to verify the requirements are met.

B. Bond Surety:

The Bond is secured by a Surety / Performance Bond, dated the _____ day of (Month, Year), from (Surety Company Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Engineering, Planning & Zoning. By acceptance of the above surety / performance bond as security, the following conditions shall apply:

1. The Surety / Performance Bond shall be in the amount of \$_____ and shall be attached to this Maintenance and Removal Bond Agreement and made a part hereof; and
2. The Surety / Performance Bond shall be clearly written to provide the beneficiary with direct and immediate access to the funds upon submission by the beneficiary of a written and signed draft request; and
3. A Surety / Performance Bond shall remain in full force and effect as security for this Bond until such time as the Bond is released.

If within ninety (90) days in advance of the Termination Date, the County Commission has not been provided with a performance bond in the place and stead of the Performance Bond under the provisions of the Agreement, the County Commission of Jefferson County, West Virginia, may draw an amount not to exceed one-hundred percent (100%) of the Performance Bond.

4. Signed draft requests against the Surety / Performance Bond will be made by the Jefferson County Commission (beneficiary) for failure on the part of (Applicant/Developer Name & Cell tower Facility Name), to complete the full removal and restoration of the cell tower facility according to the terms of this bond.

5. Drafts made against the Surety / Performance Bond, by the Jefferson County Commission, will be used exclusively for the removal and restoration of the cell tower facility herein required.

C. Length of Maintenance & Removal Bond:

The Maintenance and Removal Bond must be in good standing for the life of the facility. The property owner shall insure that the bond is renewed, and that documentation of renewal is provided to the Bonding Administrator a minimum of 90 days prior to the expiration of the current bond.

The Chief County Engineer has the authority to reevaluate the bond amount, if it, in his judgement, the amount no longer is sufficient, due to inflation, or any other increases in associated work. Should the Chief County Engineer determine that the amount must be updated, the Property Owner/Developer shall provide a new surety in the required amount

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

Failure to provide the renewed surety ninety (90) calendar days prior to expiration of the current surety, shall constitute a default on the bonding agreement and forfeiture of the bond surety.

D. Default by the Property Owner and/or Developer:

In accordance with Article 4B of the Zoning Ordinance, failure of the Lessee, Property Owner and/or Developer to meet and/or comply with this Policy may result in the County pursuing legal action pursuant to Article 3, Section 3.3 of the Zoning Ordinance, including legal action to have the Cell Tower Facility, or portions thereof as applicable, removed at the Property Owner's expense.

The County may seek to recover its costs, legal fees, and legal expenses incurred to have the facility removed, and the site restored in compliance with

this Policy.

The Property Owner/Developer shall begin removal of the cell tower facility site within ninety (90) calendar days of ceasing operations. All work required to remove the cell tower facility site shall be completed within one-hundred and eighty (180) calendar days. Time is of the essence and failure to begin removal of the site, and/or finishing the work within the required time limits, shall constitute a default under the bonding agreement.

In the event the Property Owner/Developer defaults on their obligation to begin and/or complete the required removal work, the County Commission may “call-in” the bond and use the surety funds to remove the tower and associated appurtenances, and restore the site. All costs incurred by the County shall be recoverable and shall be valid charges against the surety. This includes, but is not limited to, all materials, equipment and labor costs, construction/demolition costs, administrative costs, engineering and construction management fees, legal fees, and insurance; and shall include costs incurred for both in-house and/or contracted services.

The County’s financial obligation, with regard to the removal and restoration of the site, shall be limited to the amount of the surety funds available. The County shall not be obligated to fund any portion of the cost for the removal of a cell tower facility even if there are insufficient surety funds. The Property Owner and Developer shall assume all liability for all the costs.

The county commission shall have the right to place a lien on the property for any removal and restoration expenses not recouped from the surety funds by them; and/or to take legal action under the laws of West Virginia to recoup any costs from the Property Owner. The laws of the State of West Virginia shall take precedent and shall apply to all matters under the agreement.

E. Indemnification:

The Property Owner and Developer shall be required to indemnify, defend and hold harmless the Jefferson County Commission and its officers, directors, employees and/or agents from any action against them arising out of this Agreement and/or the removal of the cell tower facility, including by a third-party. The Property Owner and Developer shall bear all reasonable costs for legal defense against such actions.

F. Severability:

Any provision or part of the Agreement documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Property Owner and Developer, who agree that the Agreement documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

The Agreement shall supersede all prior or contemporaneous negotiations, commitments, agreements, writings or policy with respect to the subject matter hereof.

G. Successors and Assigns:

The Property Owner and Developer each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.

This AGREEMENT shall be effective (month, date & year), witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

(Property Owner Name)

(Project Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

COUNTY COMMISSION OF JEFFERSON COUNTY,
WEST VIRGINIA

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

Appendix B

Bond Surety Forms

Form No.	Surety Type	Project Type
B-1	Irrevocable Letter of Credit	Cell Tower Facility Maintenance and Removal
B-2	Cash-in-Escrow	Cell Tower Facility Maintenance and Removal
B-3	Performance/Surety Bond	Cell Tower Facility Maintenance and Removal

Form B-1

(Irrevocable Letter-of-Credit – Cell Tower Facility Maintenance and Removal)

Bank Name

Address

Telephone Number

Date

County Commission of Jefferson County
110 East Washington Street
P.O. Box 250
Charles Town, WV 25414

Re: Irrevocable Letter-of-Credit # _____ Amount \$ _____

Dear Jefferson County Commission:

By this letter, (Bank Name) hereby establishes an Irrevocable Letter-of-Credit, No. _____, and authorizes you to draw on us for the account of (Project Name/Borrower) up to an aggregate amount of \$ _____, subject to the terms and conditions stated herein.

Draws under this Letter-of-Credit are available by your draft presented to our Bank at its (Bank's Location), on or before its expiration on (January 15th or July 15th of a given year), and accompanied by the following documents:

1. A certification executed and signed by a duly authorized member of the County Commission of Jefferson County, West Virginia, that (Project Name/Borrower) has failed to perform its obligation under, and according to, the terms of that certain cell tower facility Maintenance and Removal Bond Agreement, attached hereto and made a part hereof; and
2. The original Letter-of-Credit.

We hereby agree that drafts under and in compliance with the terms of this Letter-of-Credit will be duly honored if presented as aforesaid on or before its expiration on (January 15th or July 15th of a given year).

Except as otherwise stated herein, this credit is subject to the Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter-of-Credit shall be marked "Drawn under (Bank Name) Letter-of-Credit" for (Project Name/Borrower) dated (Date of Letter-of-Credit).

Very Truly Yours,

(Bank Name)

(Signature of Bank Officer)

(Type Bank Officer's Name & Title)

(Date)

Form B-2
(Cash-in-Escrow – Cell Tower Facility Maintenance and Removal)

ESCROW AGREEMENT

THIS AGREEMENT dated this _____ day of (Month, Year), by and between (Owner/Developer Name), having their address at (Mailing/Street Address), (City), (State), (Zip Code), party of the first part, and (Bank Name), (Mailing/Street Address), (City), (State), (Zip Code), as Escrow Agent for the County Commission of Jefferson County, West Virginia, party of the second part.

WITNESSETH that the party of the first part has this day deposited with the party of the second part the sum of (Dollar Amount in Words), (Dollar Amount in Figures), as security for its undertaking to complete the cell tower facility Maintenance and Removal, as required under the Jefferson County Maintenance and Removal Bond Policy, to serve the (Site Plan Name), as more particularly described in Planning Commission File (JCPC file no). This construction is to be subject to the supervision and approval of the County Commission of Jefferson County acting by and through the Jefferson County Engineering Department. Construction must be completed by (required completion date).

The parties hereto agree that the escrow agent shall hold the respective funds as security for the performance of said undertakings by the party of the first part, and that respective funds may not be released to the party of the first part without the approval in writing of the County Commission of Jefferson County.

In case of default, the escrow agent shall be obliged to turn over to the County Commission of Jefferson County the escrowed funds or any part thereof, for the completion of the required removal and restoration of the tower facility and apputenances.

ATTEST: _____ *(Owner/Developer Name)*
BY: _____

DATE: _____ PRINT NAME: _____

TITLE: _____

DATE: _____

ATTEST: _____ *(Bank Name)*
BY: _____

DATE: _____ PRINT NAME: _____

AFFIX BANK SEAL TITLE: _____

DATE: _____

Jefferson County, West Virginia
Cell Tower Facility Maintenance and Removal
PERFORMANCE/SURETY BOND
INSTRUCTIONS

1. The following forms shall be used when a performance/surety bond is used. There shall be no deviation from this form without written approval of Jefferson County Commission or the County Administrator.

2. The full legal name, business address, and telephone number of both the Principal(s) and Surety(ies) shall be inserted in the spaces designated "Principal" and "Surety" on the face of the form. The Bond shall be signed by the person authorized to act on behalf of the Principal and the Surety. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority shall be furnished. For a power-of-attorney from a surety company to execute bonds, a certified copy of such power-of-attorney shall be submitted.

3. Surety, Fidelity, and Insurance Companies executing the Bond shall be licensed to transact business in West Virginia by the West Virginia Insurance Commissioner. The surety provider shall provide to the County Commission of Jefferson County, the Obligee, a "Certificate of Good Standing" from the West Virginia Offices of the Insurance Commissioner. If the Surety Company was not organized under the laws of West Virginia, the bond must be counter-signed by a resident agent licensed in West Virginia. The Company must have an A.M. Best rating of "A-", or better, with a Financial Size Category (FSC) of "VI" , or higher.

4. The name of each person signing this Bond must be typed or legibly printed in the space provided.

5. The "DATE BOND EXECUTED", as shown on the face of the Bond, must be the same as, or later than, the Bond Agreement that the Surety Bond secures.

6. The performance bond shall be submitted to:

Jefferson County Engineering Department
P.O. Box 716
116 East Washington Street
Charles Town, WV 25414

Attention: Bonding Administrator

Phone: 304-728-3257

(Remainder of Page Intentionally Left Blank)

KNOW ALL MEN BY THESE PRESENTS, that, we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the Obligee, the County Commission of Jefferson County, West Virginia (herein after called "County"), a political subdivision of the State of West Virginia, in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect discharge its obligations under the project identified above and satisfactorily complete the required maintenance and removal of the cell tower facility and appurtenances, as required by law and in accordance with the Maintenance and Removal Bond Policy, and any permits, all by the surety / performance bond expiration date (bond expiration date), then this Bond shall be null and void; otherwise, this Bond shall remain in full force and effect until discharged in accordance with its terms, as determined by the County. This Bond shall only be terminated upon written release by the County Commission of Jefferson County, stating that the Principal/Developer has well and truly performed and fulfilled the obligations required under the Maintenance and Removal Bond Policy and this Bond.
3. If Principal fails to complete its obligations, the County shall notify the Principal and Surety that they are in default. If such obligations are not then completed by the Principal and Surety within fifteen (15) days after notification by the County, the Surety shall pay the full penal sum amount of the Bond to the County within thirty (30) days of the initial notification referenced above. Payment by the Surety shall not be conditional on suit by the County. The County may extend the time period for completion of the Principal's and Surety's obligations; any time extension granted shall be in writing.
4. Surety expressly Waives any right to receive notice of, review, or approve any revisions to the approved project plans, and no such revision shall in any way affect the obligation of the Surety under this Bond.
5. In the event that any suit, action, or proceeding is brought by the County in order to enforce the provisions of this Bond, it is expressly agreed and understood that, regardless of when the breach of the underlying project obligations occurs, or the breach of this Bond occurs, the measure of damages recoverable shall be computed as the costs of completion or correction, or both, of the work required to be completed under the project, (1) at the time the work is actually completed and/or corrected to local and state approval and acceptance, or (2) at the time of final judgment of a court of competent jurisdiction; it is further expressly agreed and understood that the measure of damages shall include expenses attributable, but not limited to,

administrative costs, litigation costs, attorney's fees, maintenance costs, deterioration, inflation, and any cost increases arising from delay occasioned by litigation, action, or proceedings necessary to enforce the provision of this Bond.

6. Nothing in the Bond shall be construed as creating an obligation upon the County to pay for the completion or correction of the work guaranteed under the provisions of this Bond.
7. By signatures, hereto, the Principal and the Surety do hereby expressly Waive any objection that they, or either of them, might interpose in the authority of the County to require each and every provision of the foregoing Bond.

(Remainder of This Page Intentionally Left Blank. Signature Page Follows)

BOND NO. _____

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the Seal as of the day and year on the date set forth above.

PRINCIPAL / CO-PRINCIPAL

SIGNATURE: _____(SEAL)

NAME: _____
(Typed)

TITLE: _____
(Typed)

SIGNATURE: _____(SEAL)

NAME: _____
(Typed)

TITLE: _____
(Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ and _____, as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this _____ day of _____, 20_____.

My Commission Expires: _____

BOND NO. _____

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the seal as of the day and year on the date set forth above.

CORPORATE SURETY

NAME: _____
(Typed)

ADDRESS: _____
(Mailing Address)

TELEPHONE NO.: _____
(City) (State) (Zip Code)
(Typed)

STATE OF INCORPORATION OR ORGANIZATION: _____

LIABILITY LIMIT: _____

Attorney(s)-In-Fact

SIGNATURES: 1. _____ (SEAL) 2. _____ (SEAL)

NAME: _____
(Typed) (Typed)

TITLE: _____
(Typed) (Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ and _____, as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this _____ day of _____, 20_____.

My Commission Expires: _____