

**DRAFT**  
**10/09/17**

**2017 AMENDMENTS TO THE APACHE JUNCTION CITY CODE,  
VOLUME I, CHAPTER 13: PUBLIC WORKS,  
NEW ARTICLE 13-4: SMALL WIRELESS FACILITIES LOCATED IN  
PUBLIC RIGHTS-OF-WAY**

## ARTICLE 13-4

### SMALL WIRELESS FACILITIES LOCATED IN PUBLIC RIGHTS-OF-WAY

#### 13-4-1 Purpose

This article provides design standards, concepts and requirements, as well as standard terms and conditions necessary for the preservation of the public rights-of-way (“ROW”) in the city for the maximum benefit and use for the public and applies to the siting, construction or modification of any and all small wireless facilities (“SWF”) proposed to be located in the ROW.

**A. Application Authority.** Any application for a SWF to be located in the ROW is subject to approval by the city engineer in addition to other requirements and processes specified in this chapter to include the Design Standards, Concepts and Requirements set forth under Appendix A, and Standard Terms and Conditions set forth in Appendix B. Location or collocation of wireless equipment on city-owned poles shall be at the discretion of the city engineer as per state law.

**B. Eligible Applicants.** Only applicants who have been granted the right to enter the ROW pursuant to state or federal law shall be eligible to apply to install or modify a SWF or a collocation of such a facility in the ROW. A valid ROW license shall also be required prior to construction.

**C. Speculative Equipment Prohibited.** The city finds that the practice of “preapproving” wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public’s best interest. The city shall not approve any equipment or other improvements in connection with a SWF application when the applicant does not actually and presently intend to install such equipment or construct such improvements.

**D. Fiber/Cable.** No applicant seeking to install SWF antennas shall seek a ROW use permit for fiber or coaxial cable only. Applicants shall simultaneously apply for fiber installation or other cable installation when seeking to install antennas in the ROW.

**E. Application.** Applications for a SWF in the ROW shall include, in addition to other application requirements as stated in this article under Appendices A and B, the following:

1. Detailed engineering plans of the proposed facility and related report prepared by an Arizona registered engineer documenting the following:

- a. Technical engineering specifications.

b. Evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy.

c. A photograph and model name and number of each piece of equipment to be used.

d. Power output and operating frequency for the proposed antenna.

e. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges which can be accommodated.

f. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.

g. Electrical and mechanical engineering documents for the facility and all appurtenant equipment, including support equipment such as equipment cabinets and backup power.

2. A statement providing the basis for the applicant's claimed right to enter the ROW. If the applicant has a certificate of convenience and necessity ("CCN") issued by the Arizona Corporation Commission, it shall provide a copy of its CCN to public works department staff.

#### **F. Additional Design and Performance Standards.**

1. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of SWF in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community.

2. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact.

3. Facilities shall be located such that views from an adjacent residential structure are not significantly impaired.

4. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety, including, but not limited to, being located outside of sight visibility triangles and clear zones.

5. All facilities shall be of subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

6. The applicant shall use the least visible equipment possible. Antenna elements shall be flush-mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

**7. Poles.**

a. Only pole-mounted antennas shall be permitted in the ROW. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing existing poles, unless:

(1) Such new poles shall be designed to resemble existing poles in the ROW near that location, including size, height, color, materials, and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.

(2) Such new poles that are not replacement poles shall be located at least 90 feet from any existing pole to the extent feasible.

(3) A new pole analysis shall be submitted to demonstrate that the new pole is designed to be the minimum functional height and width required to support the proposed facility.

(4) All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent possible.

(5) No new wooden poles shall be permitted. For collocations on existing wooden poles wherein interior installation is infeasible, antennas, conduit, cables, and any other appurtenances attached to the exterior of the poles shall be mounted flush thereto and painted to match the pole.

b. The maximum height of any antenna shall not exceed:

(1) Four feet above the height of the existing pole.

(2) Nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any driveable road surface

for utility poles, 16 feet above any driveable road surface for light poles, or 10 feet from sidewalk elevation.

c. No portion of any antenna shall project greater than 24 inches from the pole.

d. Panel or canister antennas, exclusive of shrouds shall not exceed six cubic feet in dimension.

8. Each facility shall be designed to occupy the least amount of space in the ROW that is technically feasible.

9. Each facility shall be properly engineered to withstand wind loads as required by the adopted building code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall be submitted and shall include the impact of modification of an existing facility.

10. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian, bicycle, or vehicular traffic, inconvenience the public's use of the ROW, or create safety hazards to pedestrians, bicyclists, and motorists, and shall not be located within sight visibility triangles.

11. A facility shall not be located within any portion of ROW interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

12. All ground-mounted facilities, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed outside of the clear zone as determined by the city engineer. Placement shall not obstruct existing or future sidewalk locations.

13. Not including the electric meter, all accessory equipment shall be located underground, unless city staff determines there is no room in the ROW for undergrounding, or that undergrounding is not feasible.

a. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted:

(1) Such accessory equipment shall be enclosed within a structure and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged.

(2) In locations with rural or residential zoning only along one side of a street, above-ground accessory equipment shall not be installed on that side of the street. Such above-ground accessory equipment shall be installed along the side of the street that is not rural or residential zoned.

b. While pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this article.

14. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage, and shrubs. Additional landscaping shall be planted, irrigated, and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

15. Where facility lighting is required by the FAA, FCC, or other government entity, a lighting study shall be provided, prepared by a qualified lighting professional, to evaluate potential impacts to adjacent properties and traffic.

16. Backup generators shall not be permitted in the ROW.

17. At no time shall equipment noise from any facility exceed an exterior noise level of 65 dBA three feet from the source of the noise if the facility is located in the ROW adjacent to a business or industrial zone. Any facility located within 500 feet of any rural or residential zone, or a residential or school use, shall not exceed 55 dBA three feet from the source of the noise.

18. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism.

19. Consistent with current federal laws, at the time of modification of SWF, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise, and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

20. The installation and construction shall begin within 180 calendar days after the facility's approval or it will expire without further action by the city.

21. All applicants must secure a Letter of Credit and ROW License Agreement as set forth in this article.

22. All applicants shall pay the appropriate ROW License Fees as set forth in Apache Junction City Code, Vol. I, Chapter 4, Fees, Article 4-6, Public Works Fee Schedule, Section 4-6-2, Small Wireless Facilities Rights-of-Way Fees and Charges.

## **APPENDIX A**

### **Design Standards, Concepts & Requirements for Small Wireless Facilities in the Rights-of-Way**



## Definitions

**ANTENNA:** Communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.

**ANTENNA MOUNTING BRACKET:** The hardware required to secure the antenna to the pole.

**ANTENNA MOUNTING POST:** The vertical post or pipe that the antenna mounting bracket is mounted to in order for the antenna to be attached to the pole.

**ANTENNA SHROUD:** The three-sided cover that is mounted at the base of the antenna to conceal the appearance of the cables and wires from the hand-hole port on the pole to the bottom-fed antenna.

**CANISTER ANTENNA:** The canister or cylinder style housing used to conceal the antenna(s), amplifier(s), radio(s), cables, and wires at the top of a pole.

**COMMUNICATIONS EQUIPMENT:** Any and all electronic equipment at the Small Wireless Facility location that processes and transports information from the antennas to the wireless provider's network.

**DOG HOUSE:** The plastic or metal attachment to the base of a pole that covers the transition point of underground cables and wires to the vertical section of the pole.

**GROUND-MOUNTED EQUIPMENT:** Any communications equipment that is mounted to a separate post or to a foundation on the ground.

**LIGHT EMITTING DIODE:** A type of lighting fixture installed on city streetlight and traffic signal poles.

**LIGHT FIXTURE:** The lighting unit or luminaire that provides lighting during the evening hours or during the hours of darkness.

**LUMINAIRE MAST ARM:** The horizontal post that attaches the light fixture to the streetlight pole or traffic signal pole.

**OUTSIDE DIAMETER:** The points of measurement, using the outer edges of a pole, pipe or cylinder.

**PANEL ANTENNA:** The style of antenna that is rectangular in shape and with dimensions that are generally four (4) feet to eight (8) feet in height, by eight (8) inches to twelve (12) inches wide, and four (4) inches to nine (9) inches deep.

**REMOTE RADIO HEADS / REMOTE RADIO UNITS:** The electronic devices that are

used to amplify radio signals so that there is increased performance (farther distance) of the outgoing radio signal from the antenna.

***RIGHTS-OF-WAY:*** The area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. Rights-of-way does not include a Federal Interstate Highway, a state highway or state route under the jurisdiction of the Arizona Department of Transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the wireless provider.

***SIGHT DISTANCE EASEMENTS:*** The area of land adjacent to an intersection, driveway or roadway that has restrictive uses in order to preserve the view of oncoming or crossing vehicular and pedestrian traffic by drivers in vehicles attempting to merge with traffic or enter a roadway.

***SIGHT VISIBILITY TRIANGLES:*** The traffic engineering and safety concept that requires clear view by the driver of a vehicle to crossing traffic at a stop sign, driveway or intersection. In order to achieve clear visibility of the cross traffic, the land areas in the sight visibility triangle has specific maximum heights on landscaping, cabinets, and other potential view obstructions.

***SIGNAL HEAD:*** The “Red, Yellow and Green” light signals at a signal-controlled intersection.

***SIGNAL HEAD MAST ARM:*** The horizontal pole that has the signal heads mounted to it and attaches to the traffic signal pole.

***SMALL WIRELESS FACILITY:*** A wireless facility that meets both of the following qualifications:

(a) All antennas are located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna, that has exposed elements, the antenna and all of the antenna’s exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume, or fifty (50) cubic feet in volume if the equipment was ground-mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:

- (1) An electric meter.
- (2) Concealment elements.
- (3) A telecommunications demarcation box.
- (4) Grounding equipment.

- (5) A power transfer switch.
- (6) A cutoff switch.
- (7) Vertical cable runs for the connection of power and other services.

***STEALTH AND CONCEALMENT ELEMENTS:*** The use of shrouds, decorative elements, design concepts and faux elements so that a small wireless facility can be designed to blend in with the surrounding streetscape with minimal to any visual impact.

***UTILITY POLE:*** A pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals as defined in A.R.S. § 9-591(21). Utility pole does not include a monopole.

**Standard Design Requirements**  
**Small Wireless Facility on Existing Streetlight**

The following design standards shall apply, in addition to the *Common Standards Design Concepts, Requirements and Details* that is included in this document, to a Small Wireless Facility (“SWF”) proposed for a location with an existing City-owned or third party-owned streetlight in the City of Apache Junction rights-of-way (“ROW”). These design standards are not exhaustive and the City, as the owner, keeper and manager of the ROW, retains the right to modify or adjust the requirements on a case-by-case basis.

**(A) Pole Criteria:**

(1) **Purpose of Streetlight Pole:** The primary purpose of the pole shall remain as a pole structure supporting a streetlight luminaire and related streetlight fixtures used to provide lighting to the City ROW. The attachment of wireless equipment to an existing streetlight pole or to a replacement pole that impedes this primary purpose will not be approved.

(2) **General Requirement:**

(a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.

(b) A replacement pole shall match the City of Apache Junction standard streetlight pole, as closely as possible, subject to more specific criteria below.

(c) For each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by the wireless provider to City in advance so the pole can be replaced promptly in case of a knockdown.

(d) All plans shall be signed and sealed by a professional engineer licensed in the State of Arizona.

(e) All other details in the City of Apache Junction Street Light Standards which the City Engineer determines that are applicable.

(3) **Specific Criteria:**

(a) **New or Replacement Pole Height:** A new or replacement pole may be installed if one of the two height requirements is met:

(i) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. § 9-592(I); or

(ii) Up to forty (40) feet above ground level, per A.R.S. § 9-592(J).

**(b) Overall Height of Replacement Pole**

(i) The “base” height of an existing streetlight pole shall be the height of the vertical pole section from the existing grade. The height of the luminaire mast arm, if higher than the vertical pole section, shall not be used to determine the new overall height of the replacement pole.

(ii) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister or the top of the panel antenna.

(c) Increase in Outside Diameter (“OD”) of Pole: The non-tapered replacement pole OD of the base section shall be equal to the top section, and the OD shall not exceed eight and five-eighths (8-5/8) inches (the pole manufacturing industry standard OD for an 8 inch diameter pole) or a 100% increase in diameter of the original pole, whichever is less.

**(d) Luminaire Mast Arms**

(i) All luminaire mast arms shall be the same length as the original luminaire arm, unless the City requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

(ii) Unless otherwise approved, all luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.

(iii) The replacement luminaire mast arm shall be at the same height above the ground as the existing luminaire.

**(e) Luminaire Fixtures**

(i) All replacement poles shall have the City standard light-emitting diode (“LED”) light fixture installed.

(ii) All replacement light fixtures shall have a new City standard photo cell or sensor.

(iii) The replacement light fixture mounting height shall be at the same mounting height as the existing luminaire, or as directed by city engineer.

**(f) Pole Foundation**

- (i) All pole foundations shall conform to the City's adopted standards and specifications on streetlight design and shall be modified for wireless communications equipment and cables.**
- (ii) The City, in its sole discretion, may allow the pole foundation design to be "worst case" for all soil conditions.**
- (iii) A separate, one-inch diameter conduit shall be installed in the pole foundation for the City's luminaire wire and any additional City wires or cables. The City's conduit shall be trimmed to three (3) inches above the top of the pole foundation.**
- (iv) The height of the pole foundation shall be two (2) inches above finished grade. If the pole foundation encroaches into any portion of the sidewalk, then the pole foundation shall be flush with the sidewalk.**
- (v) Shrouds for the streetlight pole mounting bolts may be required for the replacement pole.**
- (vi) City standard is a direct bury pole. If the wireless provider determines a replacement pole needs to be mounted to a concrete foundation (i) through (v) shall be strictly followed.**

**(g) Painting of Replacement Pole**

- (i) If the replacement pole is an unpainted galvanized pole, the pole shall not be painted or have a finish unless otherwise specified by the City.**
- (ii) For powder coated bronze/silver street light poles, the wireless provider shall replace with same powder coated color and/or color combination as determined by the City Engineer.**
- (iii) For Park Green SL-10 style poles (no longer being installed), the wireless provider shall replace with powder-coated bronze/silver SL-8 type pole.**

**(h) Painting Antennas and Mounting Equipment**

- (i) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams "Web Grey" (SW7075) color or equivalent, unless specified**

otherwise by the City.

- (ii) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the City.
- (i) Wireless provider shall install pole numbers on each replacement pole (to match the number on the existing streetlight pole being replaced) per Apache Junction Street Light Design Manual Standards that the City Engineer determine are applicable.

**Standard Design Requirements**  
**Small Wireless Facility on Traffic Signal Pole**

The following design standards shall apply, in addition to the *Common Standards Design Concepts, Requirements and Details* included in this document, to a Small Wireless Facility (“SWF”) proposed for a location with an existing City-owned traffic signal in the City of Apache Junction right-of-way (“ROW”). These design standards are not exhaustive and the City, as the owner and manager of the ROW retains the right to modify or adjust the requirements on a case-by-case basis.

**(A) Pole Criteria:**

(1) **Purpose of Traffic Signal Pole:** The primary purpose of the traffic signal pole shall remain as a pole structure supporting a traffic signal and related streetlight fixtures used to provide traffic control and lighting to the City ROW. The attachment of wireless equipment to a new or replacement traffic signal pole that impedes this primary purpose will not be approved.

**(2) General Requirement:**

(a) A SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.

(b) A replacement pole shall match the City of Apache Junction standard traffic signal pole, as closely as possible, subject to more specific criteria below.

(c) For each individual pole type or style used to support the wireless equipment, one spare replacement pole shall be provided by wireless provider to City in advance so the pole can be replaced promptly in case of a knockdown.

(d) All plans shall be signed and sealed by a professional engineer licensed in the State of Arizona.

(e) All other details in the City of Apache Junction Traffic Signal Design Standards that the City Engineer determines are applicable.

**(3) Specific Criteria:**

(a) **New or Replacement Pole Height:** A new or replacement pole may be installed if one of the two height requirements is met:

(i) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. § 9-592(I); or



(ii) Up to forty (40) feet above ground level, per A.R.S. § 9-592(J).

(b) Overall Height of Replacement Pole: The height of the replacement pole is measured from grade to the top of the antenna canister or the top of the panel antennas if the antennas are the highest elements.

(c) Increase in Outside Diameter (“OD”) of Pole

(i) If the replacement pole is a taper design, the diameter of the base section of the replacement pole OD shall not exceed twelve (12) inches or a 100% increase in the OD of the base section, whichever is less.

(ii) If the replacement pole is non-tapered, then the diameter of the base section shall be equal to the top section and the OD shall not exceed twelve (12) inches or a 100% increase, whichever is less.

(d) Signal Head Mast Arms

(i) The traffic signal head mast arms shall be the same length as the original signal head mast arm unless the City requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

(ii) All signal head mast arms shall match the arc (if applicable) and style of the original signal head mast arm.

(e) Luminaire Mast Arms

(i) All luminaire mast arms shall be the same length as the original luminaire arm unless the City requires the mast arm to be different (longer or shorter) based upon the location of the replacement pole.

(ii) All luminaire mast arms shall match the arc (if applicable) and style of the original luminaire arm.

(f) Signal Heads

(i) All existing signal heads shall be replaced, at no cost to City, with new light-emitting diode (“LED”) signal heads, per City of Apache Junction Traffic Signal Design Standards that the City Engineer determines apply.

(ii) All signal heads shall be procured from a City approved signal heads supplier or manufacturer.

**(g) Luminaire Fixtures**

**(i) All replacement poles shall have the City standard LED light fixture installed.**

**(ii) All replacement light fixture shall have a new photo-cell or sensor installed to City standard.**

**(h) Other City Elements on Signal Mast Arm or Pole: All existing emergency signal detection units, video detection cameras, video cameras, cross walk service buttons, cross walk signals, and any other pedestrian or traffic devices shall be replaced with new units by wireless provider and installed at no cost to the City. All equipment shall be procured from a list of City approved suppliers.**

**(i) Signs and Other Miscellaneous: All street name plates or signs, directional signs and any other City approved signs shall be replaced with new signs at no cost to the City. All signs and attachments shall be procured from a list of City approved suppliers.**

**(j) Traffic Signal Pole Foundation**

**(i) All pole foundations shall conform to the City's standards and specifications on traffic signal pole design and shall be modified for wireless communications equipment, hand holes and cables.**

**(ii) The wireless provider shall install a three (3) inch diameter OD conduit in the pole foundation for the City's cables and wires for the signal heads, luminaire and devices on the signal mast arm and luminaire mast arm. The City's conduit shall be trimmed to three (3) inches above the top of the pole foundation.**

**(iii) In addition to the conduits for the City's use inside the pole, the wireless provider shall install one of the two options for its cables and wires:**

**(a) One, six (6) inch diameter OD conduit in the pole foundation;  
or**

**(b) Two, four (4) inch diameter OD conduits in the pole foundation. The length of the conduit shall extend from the pole foundation to six (6) inches above the signal head mast arm.**

**(iv) Pole Foundation – Height Above Ground Level**

(a) If the pole foundation is in a landscaped or unimproved area, the height of the caisson shall be two (2) inches above finished grade. However, if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the surface of the immediate area.

(b) Shrouds for the traffic signal pole mounting bolts may be required for the replacement pole.

**(k) Painting of Pole, Antennas and Mounting Equipment**

(i) Specifications on paint color and painting process are provided in the City of Apache Junction Traffic Signal Design Standards that the City Engineer determines apply.

(ii) For powder-coated traffic signal poles, the wireless provider shall replace with same powder-coated color and/or color combination.

(l) **Construction of Traffic Signal:** The installation work of the replacement traffic signal pole, including mast arms, signal heads and devices, must be performed by an Arizona licensed traffic signal contractor with a minimum of five (5) years of experience installing traffic signals.

**Standard Design Requirements**  
**Small Wireless Facility on Existing Utility Pole**

The following design standards shall apply, in addition to the *Common Standards Design Concepts, Requirements and Details* that is included in this document, to a Small Wireless Facility (“SWF”) proposed for a location with an existing third party-owned utility pole in the City of Apache Junction rights-of-way (“ROW”). These design standards are not exhaustive and the City, as the owner, keeper and manager of the ROW retains the right to modify or adjust the requirements on a case-by-case basis.

**(A) Pole Criteria:**

(1) **Purpose of Utility Pole:** The primary purpose of the pole shall remain as a pole structure supporting a cables and wires used to provide communications services and electric distribution in the City ROW. The attachment of wireless equipment to an existing third party-owned utility pole that impedes this primary purpose will not be approved.

(2) **General Requirement:**

(a) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.

(b) A SWF mounted on an existing third party-owned utility pole is subject to more specific criteria below.

(c) Each existing pole used to support the wireless equipment, the pole shall be inspected, tested and approved by a licensed structural engineer to be able to have the additional weight and wind-loading placed upon it within industry accepted safety margins.

(d) All plans shall be signed and sealed by a professional engineer licensed in the State of Arizona.

(3) **Specific Criteria:**

(a) **Replacement Pole Height:** A replacement pole may be installed if one of the two height requirements is met:

(i) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. § 9-592(I); or

(i) Up to forty (40) feet above ground level, per A.R.S. § 9-592(J).

(b) **Overall Height of Replacement Utility Pole**

(i) The “base” height of an existing utility pole shall be the height of the vertical pole section from the existing grade.

(ii) If the antennas are the highest vertical element of the site, then the new overall height of the replacement pole is measured from the existing grade to the top of the canister or the top of the panel antenna.

**(c) Use of Existing Pole – Wood**

(i) An existing wood pole used for a SWF shall have the antennas contained within an eighteen (18) inch OD canister mounted at the top of the pole.

(ii) Unless otherwise approved, the cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase outside of the pole, facing away from the street or away from on-coming traffic.

(iii) If a “dog house” (see Exhibit C) is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the City shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis.

**(d) Use of Existing Pole – Metal**

(i) An existing metal pole used for a SWF shall have the antennas contained within an eighteen (18) inch OD canister mounted at the top of the pole.

(ii) Panel antennas on a metal pole shall have the same “RAD center” (center of radiation) so the antennas will be at the same height on the pole.

(iii) The cables and wires from the base of the pole to the antennas shall be installed in a conduit or cable chase on the outside of the pole, facing away from the street or away from on-coming traffic.

(iv) If a “dog house” (see Exhibit C) is required as a transition point connecting the underground cables and wires from the ground mounted equipment to the pole, the City shall provide the maximum size, dimension and shape of the dog house on a case-by-case basis.

**(e) Painting of Pole and Dog House**

(i) If the replacement pole is an unpainted galvanized pole, the pole

shall not be painted or have a finish unless otherwise specified by the City.

(ii) If the existing or replacement pole includes a dog house for the transition of the cables and wires to the pole, the dog house shall be painted the same color as the pole or a color specified by the City.

**(f) Painting Antennas and Mounting Equipment**

(i) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted on a new or replacement unpainted galvanized pole shall be painted Sherwin Williams “Web Grey” (SW7075) color or equivalent, unless specified otherwise by the City.

(ii) All antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and all other equipment mounted on a painted new or replacement pole shall be painted a color specified by the City.

(iii) If the antenna is mounted on a wood pole, the color of the antenna, antenna canister, mounting brackets and posts, shrouds and cable chases shall be painted a color specified by the City that will closely match the color of the wood.

(g) **Ground-Mounted Equipment:** The City may require the ground-mounted wireless equipment to be screened or concealed to reduce the visual impact to the surrounding area. The screening or concealment shall take into account the location of the site, the use of the immediate area, and the existing aesthetic elements surrounding the site.

**Standard Design Requirements**  
**Small Wireless Facility on New Poles in Rights-of-Way**

The following design standards, in addition to the *Common Standards Design Concepts, Requirements and Details* that are included in this document, shall apply to a Small Wireless Facility (“SWF”) that a wireless provider may install in the rights-of-way (“ROW”) that is not either: 1) a replacement pole for an existing streetlight, or 2) a replacement pole for an existing traffic signal.

A new wireless support structure, including a monopole that is up to forty (40) inches in outside diameter (“OD”), shall incorporate the highest level of stealth and concealment of the antennas and wireless equipment in order to minimize the visual impact of the site to the public.

**(A) Pole Criteria:**

(1) **Purpose of Wireless Support Structure:** The sole purpose of a new vertical element or wireless support structure is to attach antennas for the provision of wireless services by a wireless provider in the City’s ROW.

(2) **General Requirement:**

(a) A new wireless support structure shall be designed to minimize the visual and aesthetic impact of the new vertical element and associated equipment upon the look, feel, theme, and use of the surrounding area.

(b) An SWF shall be designed to blend in with the surrounding streetscape with minimal to any visual impact.

(c) The new wireless support structure shall be architecturally integrated and compatible with the use of the surrounding area.

(d) All plans shall be signed and sealed by a professional engineer licensed in the State of Arizona.

(3) **Specific Criteria:**

(a) **New Pole Height:** A new wireless support structure may be installed if one of the two height requirements are met, see A.R.S. § 9-592(I) and A.R.S. § 9-592(J):

(i) Up to a ten (10) foot increase, not to exceed fifty (50) feet total (whichever is less), per A.R.S. § 9-592(I); or

(ii) Up to forty (40) feet above ground level, per A.R.S. § 9-592(J).

(b) **Overall Height of New Pole:** The height of the new wireless support structure is measured from grade to top of the antenna canister, or the top of the panel antenna if the antennas are the highest elements of the site. Otherwise, the measured height shall be from existing grade to the highest point of the wireless support structure.

(c) **Outside Diameter of Monopole:** The maximum outside diameter of a monopole, as defined in A.R.S. § 9-591(13), shall not exceed forty (40) inches.

(d) **Stealth and Concealment Elements:** As part of the stealth and concealment elements of the wireless support structure, the City may require the wireless provider to install street name plates, directional signs, and other decorative signs or artistic elements on the structure.

(i) The wireless provider is solely responsible for the cost of all stealth and concealment elements and the installation of other elements required by the City.

(ii) The wireless provider is responsible for the performance of and any costs incurred for regular upkeep, maintenance and replacement (if necessary) of these stealth and concealment elements.

(e) **Architectural Integration with Surrounding Area**

(i) The new wireless support structure shall be designed in consultation with various internal City stakeholders and may include external stakeholders.

(ii) No new wireless support structure shall be constructed without the consent and simple majority approval of the key stakeholders.

(iii) The City may require the new wireless support structure to be constructed of a specific material that will enhance the stealth and concealment of the site.

(f) **Pole Foundation**

(i) The pole foundation for the wireless support structure, if required, shall conform to structural engineering standards acceptable to the City, with design modifications for wireless communications equipment and cables.

(ii) The height of the pole foundation shall be two (2) inches above finished grade. However, if the pole foundation is adjacent to or within a sidewalk or ramp, the height of the pole foundation shall be flush with the



surface of the immediate area.

(iii) Shrouds for the pole mounting bolts may be required.

**(g) Painting of Wireless Support Structure, Antennas and Mounting Equipment**

(i) The City shall identify the paint colors, location of paint and any decorative work that may be painted onto the new wireless support structure.

(ii) The City shall identify the paint colors for the antennas, antenna mounting brackets and posts, antenna shrouds, and cables.

(iii) The City may require the new wireless support structure to be painted using a powder-coat process.

**(h) Ground-Mounted Equipment:** The City may require the ground-mounted wireless equipment to be screened or concealed to reduce the visual impact to the surrounding area. The screening or concealment shall take into account the location of the site, the use of the immediate area, and the existing aesthetic elements surrounding the site.

**Standard Design Requirements**  
**Common Standard Design Concepts Requirements and Details for Small**  
**Wireless in the Rights-of-Way**

The following standard design requirements shall be applied to all new small wireless facilities in the City's rights-of-way ("ROW"), whether for a small wireless facility to be installed on an existing or replacement streetlight pole, an existing or replacement traffic signal pole, an existing or replacement utility pole, or on an existing or new wireless support structure.

**(A) Pole Design & Installation**

**(1) Replacement Pole Clearances – Underground Utilities:** All ground-mounted electrical equipment shall maintain minimum horizontal clearance from underground utilities.

- Clearance from water lines shall be at least six (6) feet.
- Clearance from sewer lines shall be at least six (6) feet.
- Clearance from telecommunications shall be at least one (1) foot.
- Clearance from cable television lines shall be at least one (1) foot.
- Clearance from all other underground infrastructure shall be at least six (6) feet.

All of the above distances shall be verified by the wireless provider and communicated to the City Engineer in a form as he/she so directs.

(a) The City, in its sole discretion, may grant an exception, upon approval by the City Engineer, from these horizontal separation distances on a case-by-case basis. The approval of an exception is dependent factors specific to the site.

(b) In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have lines, pipes or property moved so that minimum clearance is achieved. All relocation of City owned or a privately-owned facility shall be at the sole expense of the wireless provider.

**(2) Calculating the Base Height of an Existing Pole:** The base height, from which the calculation of the "increase in pole height" is referenced for determining the overall pole height, shall be calculated as follows:

**(a) Streetlight Pole (*see* Exhibit A1 and A2)**

- (i) A streetlight with a separate luminaire mast arm mounted to the vertical pole shall use the top of the vertical pole as the base height.

(ii) A streetlight, with the luminaire mast arm integrated (e.g. telescopic style pole) into the top vertical section of the pole, shall use the point on the pole where the mast arm is connected plus twenty-four (24) inches as the base height.

(b) Traffic Signal Pole (*see Exhibit B*): A traffic signal pole with a luminaire mast arm that is mounted above the signal head mast arm to the pole shall use the top of the vertical portion of the pole as the base height.

(3) Replacement Pole Clearance – Original Streetlight Pole or Traffic Signal Pole: The minimum distance of the replacement pole from the original pole location shall be sixty (60) inches or more so that construction can occur safely. The City may change this minimum distance on a case-by-case basis.

(4) Replacement Pole Clearances – Sidewalks: The new or replacement pole shall maintain twelve (12) inch minimum clearance distance from sidewalks. The City, in its sole discretion, may increase that minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area. The wireless provider shall verify this dimension in a form as directed by the City Engineer.

(5) Sight Distance Easements (“SDE”) and Sight Visibility Triangles (“SVT”): All new and replacement poles shall be installed in a location that does not impair or interfere with SDE or SVT safety requirements.

(6) Cables, Wires and Jumpers

(a) All cables for the wireless equipment and antennas – except where such cables or wires attach to the ports in the antenna – shall be located inside a conduit, inside the caisson and pole. There shall not be any “dog house” or externally visible conduit or entry point of the cables.

(b) All electrical wires for the streetlight luminaire, traffic signal heads, and any City device on the pole shall be new and connected to the existing power source.

(7) Hand-holes

(a) All hand-hole locations shall be called out on the plans.

(b) All hand-holes near antennas shall have the top of the hand-hole no lower than the bottom height of the antennas.

(c) The bottom of the hand-hole should not exceed six (6) inches below

the bottom of the antenna.

**(8) Wireless Facility Identification Information**

(a) A four (4) inch by six (6) inch radio frequency safety notice may be mounted no less than twenty-four (24) inches from the bottom of the antenna, facing away from traffic.

(b) The wireless provider may place a discreet site identification or number. The size, color and location of this identifier shall be determined by the City.

(c) No wireless provider signs may be placed on a streetlight, traffic signal pole, wireless support structure, or a new or replacement pole except to the extent required by local, state or federal law or regulations.

**(9) Interference with City Wireless Network:** The City has certain wireless devices in a network that connects traffic signals, community centers, water sites, and other locations for the City's proprietary use. The selection of a location for a wireless site shall consider the potential interference of the City's wireless network with RF from a wireless provider's proposed site.

(a) The City, in its sole discretion, after researching the proposed site, radio frequencies, line of sight to other wireless locations in the City's network, and other technical factors may allow a wireless provider to install a site in the ROW.

**(10) Cable Chase and Dog Houses:** The City, in its sole discretion, shall determine if an exterior cable chase and dog house are aesthetically compatible with the pole and immediate area. The materials and paint color of the cable chase and dog house shall be determined on a case-by-case basis.

**(B) Removal of Original Pole, Equipment and Pole Foundation**

**(1) Removal of Original Signal Pole, Mast Arm, Signal Heads and Luminaire**

(a) The City shall determine what original components, (e.g., original pole, mast arm, signal heads and luminaire, etc...) shall be delivered at no cost to the City, to the City's Public Works Department by the wireless provider.

(b) If the City accepts some of the original components, then only those components shall be delivered by the wireless provider to the City

Public Works Department and the remaining components shall be discarded by the wireless provider.

(2) **Removal of Original Streetlight or Traffic Signal Pole Foundation:** The concrete pole foundation for the original streetlight or traffic signal pole shall be removed by the wireless provider as instructed by the City:

(a) **Partial Removal:** The original pole foundation shall be taken back to a level that is twelve (12) inches below existing grade and covered with four (4) inches of one-half (1/2") inch to three (3/4") quarter inch rock materials. The remaining eight (8) inches shall be native soil.

(b) **Complete Removal:** If the entire original pole foundation must be removed, then all materials (concrete, rebar, metals, bolts, etc.) shall be removed. The City's Inspector shall determine, on a case-by-case basis, the type of backfill material and compaction required – ranging from native soil that is compacted to a half (1/2) sack slurry for the entire depth, or a combination of native soil and slurry.

**(C) Antennas, RRH/RRU, Cables and Mounting on Pole:**

(1) **General Requirement:** All antennas shall be installed in a manner that minimizes the visual impact to the general public. All work shall be performed in a professional manner that is consistent with the highest standard of workmanship.

**(2) Specific Criteria:**

**(a) Antenna Mounting Posts and Brackets**

(i) All panel antennas shall be mounted directly to the pole or onto a mounting pole so that the distance from the "face" of the streetlight pole to the back of the antenna does not exceed nine (9) inches.

(ii) All mounting posts shall be trimmed so that the poles do not extend higher than the top of the antenna or protrude lower than the antenna unless necessary to install the shroud.

(iii) All pole attached wireless equipment must be a minimum ten (10) feet from the sidewalk elevation.

(iv) All of the above dimensions shall be confirmed by the wireless provider in a form as directed by the City Engineer.

**(b) Panel Antennas**

(i) All panel antennas for a small cell site shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume in accordance with A.R.S. § 9-591(19)(a). (NOTE: This volume does not include antenna cable shrouds when required.)

(ii) All panel antennas with exposed cables from the bottom of the antenna shall have a shroud installed on the antenna or antenna mounting posts to conceal the cables. (*see* Exhibits D1 and D2)

(a) The type of shroud may be a forty-five (45) degree angle (away from the bottom of the antenna; toward the pole) or a ninety (90) degree angle (parallel to the bottom of the antenna) depending on the location of the site.

(b) The shroud shall extend from the bottom of the antenna to two (2) inches below the bottom of the nearest hand-hole.

**(c) Canister Antennas**

(i) All canister antennas shall fit within an imaginary enclosure of not more than six (6) cubic feet in volume. (Note: This volume does not include the canister as it is a stealth device and not the antenna.)

(ii) The canister shall be no larger than eighteen (18) inches in diameter OD.

(iii) All canister antennas shall be located in a canister that is mounted to a base plate at the top of the vertical section of the replacement pole.

(iv) All cables protruding from the canister shall be concealed within the canister or by a shroud at the point where the canister is mounted to the base plate.

(d) Remote Radio Heads (“RRH”) / Remote Radio Units (“RRU”): Under A.R.S. § 9-591(19)(a), the RRH/RRU is not considered part of the antenna. If allowed, the RRH/RRU shall be calculated as part of “all other wireless equipment associated with this facility...” in A.R.S. § 9-591(19) (b) that is subject to the twenty-eight (28) cubic feet maximum size for small cell sites.

(i) On a case-by-case basis, the City in its sole discretion and – upon reviewing the landscape in the immediate surrounding area, the location of the pole, and stealth options, may allow a site to have an RRH/RRU installed on the pole.

**(D) Ground-mounted Equipment:**

**(1) General requirement:** All ground-mounted equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public. All work shall be performed in a professional manner that is consistent with the highest standards of workmanship.

**(2) Specific criteria:**

**(a) Sight Distance Easements (“SDE”) and Sight Visibility Triangles (“SVT”)** all ground-based wireless equipment shall be installed in a location that does not impair or interfere with SDE or SVT safety requirements. To ensure proper sight distance, all City of Apache Junction Standard Details that the City Engineer determines shall apply.

**(b) Ground Equipment Location – Generally:** All ground-based wireless equipment, including but not limited to equipment cabinets or power pedestals, shall be placed as far as practical to the back of the ROW while maintaining at least three (3) feet of ingress/egress in the ROW or public utility easement (“PUE”) around the equipment.

**(c) Ground Equipment Clearances—Underground Utilities**

**(i) All ground-mounted electrical equipment shall maintain minimum horizontal clearance from below-ground utilities:**

- Clearance from water lines shall be at least six (6) feet.
- Clearance from sewer lines shall be at least six (6) feet.
- Clearance from telecommunications shall be at least one (1) foot.
- Clearance from cable television lines shall be at least one (1) foot.
- Clearance from all other underground infrastructure shall be at least six (6) feet.

All of the above dimensions shall be confirmed by the wireless provider in a form as directed by the City Engineer.

**(ii) The City, in its sole discretion, may grant an exception upon approval from the city engineer, from these horizontal separation distances on a case-by-case basis. The approval of an exception is dependent on factors specific to the site.**

**(iii) In the case where there is an issue with horizontal separation from other underground utilities, the wireless provider may elect to work with the impacted utility to have its lines, pipes or property moved so that minimum clearance is achieved. All relocation work of City-owned or a privately-owned utility shall be at the sole expense of the wireless provider.**

**(d) Ground Equipment Clearance – Sidewalks:** The ground equipment shall maintain a minimum twelve (12) inch clearance distance from sidewalks. The City, in its sole discretion, may increase the minimum clearance on a case-by-case basis to ensure the safe use of the sidewalk and adjacent area.

**(e) Compliance with Height Requirements:** Evidence or documentation that, where the above-ground structure is over thirty-six (36) inches in height, given its proposed location, the structure will comply or be in compliance with applicable state and City of Apache Junction planning and zoning ordinances.

**(f) Screening of Ground Equipment:** The City, in its sole discretion, may require the ground-mounted equipment to be screened; the type of screening materials and design will be addressed on a case-by-case basis.

**(i)** In cases when screening is not required, the City may specify the paint color of the ground-mounted equipment.

**(g) Decals and Labels**

**(i)** All equipment manufacturers' decals, logos and other identification information shall be removed unless required for warranty purposes.

**(ii)** The wireless provider of the site may place an "emergency contact" decal or emblem to the ground equipment.

**(iii)** The ground-mounted equipment shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

**(h) Equipment Cabinets on Residential Property**

**(i) Residential Single-Family Lot:** The Wireless Equipment and Ancillary Equipment listed in A.R.S. § 9-591(19)(b) shall not exceed thirty-six (36) inches in height in the front yard of a residential single-family zoned property.

**(ii) Air-conditioning Units:** Unless otherwise specified by City, a wireless equipment cabinet with air-conditioning (not a fan only) shall be enclosed by walls and setback a minimum of fifteen (15) feet from lots where the existing or planned primary use is a residential single-family dwelling.

**(i) Electric Company Meter**



(i) All electric company meters shall be installed in the ROW or PUE. The location of the meter equipment shall have minimum ingress and egress clearance from private property lines and driveways.

(ii) All electric company meters shall maintain minimum clearance from above-ground utility cabinets and below-ground utilities.

(iii) All electric company meters shall be installed in a location that does not impair or interfere with the SDE or SVT safety requirements of the City.

(iv) The electric company meters shall be screened or contained within a “Myers-type” or “Milbank-type” pedestal cabinet that is painted to match the ground equipment or as specified by the City. (*see* Exhibit E)

(v) In the case where screening is not required, the City may specify the paint color of the electric company meter cabinet on a case-by-case basis.

### **City of Apache Junction Contacts**

For questions regarding these design standards, concepts and requirements contact:

City Engineer  
575 East Baseline Avenue  
Apache Junction, AZ 85119  
480-982-1055

## Exhibit A1

### Calculation Points for Height of an Existing Streetlight with Separate Luminaire Mast Arm



The purple line next to the streetlight depicts the section of the existing streetlight pole that shall be used to calculate the height of the existing pole. The lines are not to scale and are used solely for illustrative purposes.



## Exhibit A2

### Calculation Points for Height of an Existing Streetlight with Integrated Luminaire Mast Arm



The “connection point” on an existing telescopic style streetlight pole with an integrated luminaire mast arm



The top and bottom points on a telescopic streetlight pole to calculate the vertical height of the existing streetlight pole plus twenty-four (24) inches

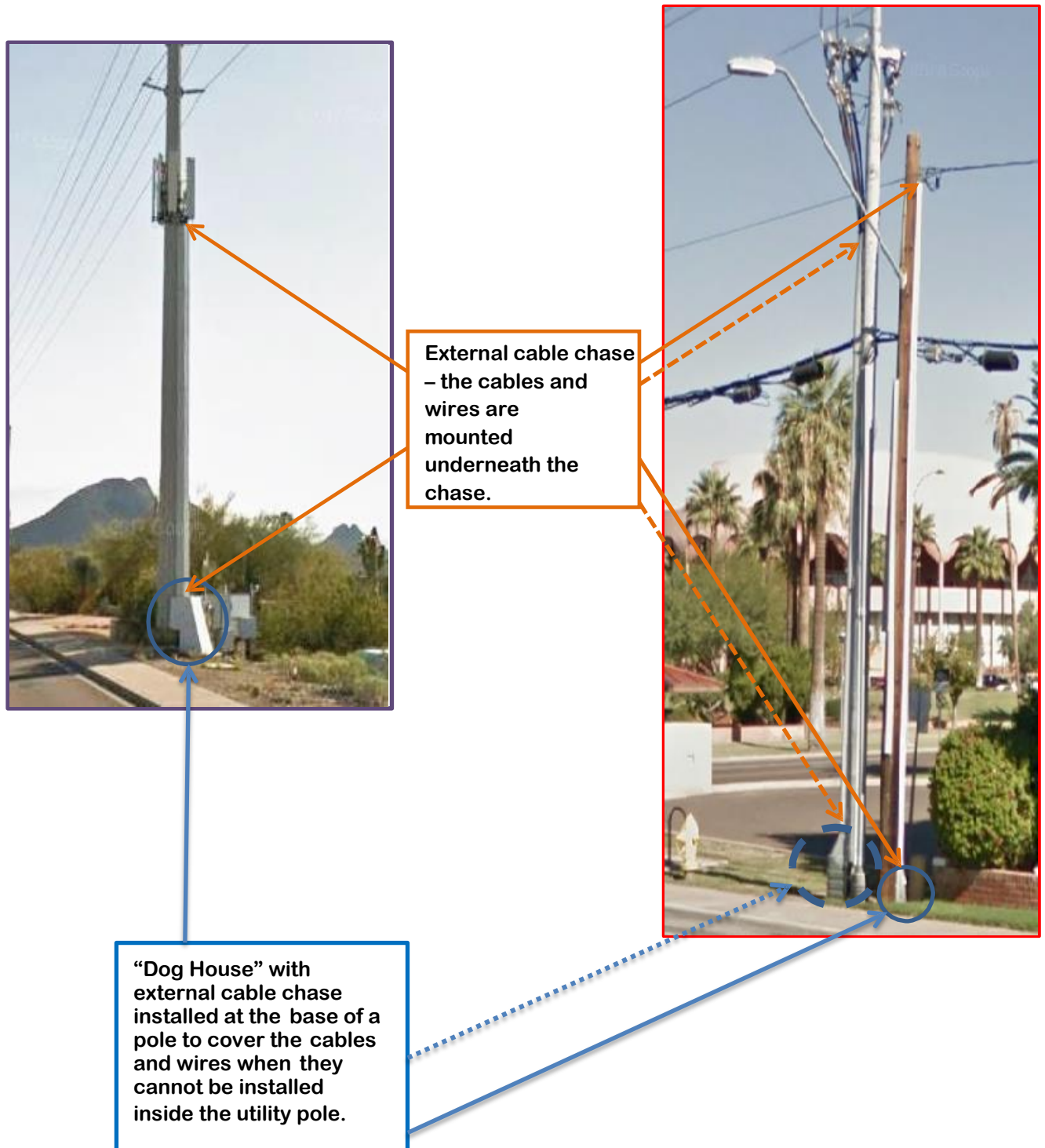
**Exhibit B**  
**Calculation Points for Height of Existing Traffic Signal Pole**



The top and bottom points on a traffic signal pole to calculate the base vertical height of the existing pole



**Exhibit C**  
**Dog House – Cable Transition from Underground to Electric Utility Pole**



**Exhibit D1**  
**Antenna Shrouds – 45 Degrees**



**Exhibit D2**  
**Antenna Shrouds – 90 Degrees**





**Exhibit E**  
**Examples of Electrical Meter Pedestals – “Myers” or “Milbank” Style**



## **APPENDIX B**

### **Wireless Facilities Standard Terms and Condition**

The Wireless Facilities Standard Terms and Conditions (“Standard Terms”) are made by the City of Apache Junction, an Arizona municipal corporation (“City”).

### STANDARD RECITALS

A. Various laws (the “telecommunications laws”) authorize City to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate a licenses for a telecommunication provider (“Provider”) and otherwise regulate the installation, operation and maintenance of telecommunications systems. The telecommunications laws include, without limitation, the following:

1. Apache Junction City Code, Volume I, Chapter 13: Public Works, Articles 13-3 and 13-4.
2. A.R.S. §§ 9-581 through 9-583, §§ 9-591 through 9-599 and other state and federal statutes.
3. The Constitution of the State of Arizona.
4. Other applicable federal, state and local laws, codes, rules and regulations.
5. City’s police powers, its authority over public rights-of-way (“ROW”), and its other governmental powers and authority.

B. City owns public street and alley ROW and public utility easements within the boundaries of the City of Apache Junction that are designated for use by utility companies for installation, operation and repair of water, electrical and other utilities pursuant to licenses or other agreements between utility companies and City (collectively the “ROW”).

C. City anticipates that one or more Providers may desire to locate antennas and immediately related equipment at various sites within the ROW.

D. The Standard Terms become effective as to each site as they are incorporated in the Rights-of-Way Antenna License Agreement (“Agreement”) by reference. Except as otherwise stated, each Agreement stands on its own.

E. The purpose of these Standard Terms is to promote uniformity in the Agreements and to streamline the preparation and administration of the Agreement.

F. Because City’s existing streetlight poles and traffic signed poles are not designed to safely support the additional weight and stress of wireless facilities, Providers shall be required to provide poles designed to support these facilities to replace existing poles prior to attaching wireless facilities.

## STANDARD TERMS

### 1. Definitions. For the purposes of the Standard Terms:

***Antenna:*** Communications equipment that transmits or receives electromagnetic radio frequency (“RF”) signals and that is used in providing wireless services.

***Base Use Fee:*** The amount that the Provider shall pay to City for each year of this license for use of City ROW and City-owned Pole, as set out in the current fee schedule.

***Communications Equipment:*** Any and all electronic equipment at the Small Wireless Facility (“SWF”) location that processes and transports information from the antennas to the Provider’s network.

***Competing Users:*** Entities that own the water pipes, cables and wires, pavement, and other facilities which may be located within the ROW. The competing users include without limitation, the City, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the use areas.

***Encroachment Permit:*** A permit issued pursuant to Chapter 13, Volume I of the Apache Junction City Code that allows the Provider to perform work in the ROW and to install and operate improvements in the ROW.

***FCC:*** The Federal Communications Commission.

***FCC Rules:*** All applicable RF emissions laws and regulations.

***FCC OET Bulletin 65:*** The FCC’s Office of Engineering & Technology Bulletin 65 that includes the FCC RF Exposure Guidelines.

***Ordinary Permit Use Fee:*** The City’s encroachment permit application, review and other fees related to the issuance of the permit.

***RF:*** Radio frequency.

***RF Letter:*** A letter attesting to the Provider’s compliance with FCC RF exposure guidelines from the Provider’s senior internal engineer.

***Rights-of-way:*** The area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. ROW does not include a Federal Interstate Highway, a state highway or state route under the jurisdiction of the Department of Transportation, a private easement, property that is owned by a special taxing district, or a utility easement that does not authorize the deployment sought by the Provider.

***Site Documents:*** The depiction of the use area, schematic plans and map showing location of the installation of the Wireless Facility in the ROW, including but not limited to the title report of the use area, vicinity map, site plan, elevations, technical specifications and the cubic feet of the non-antenna wireless equipment.

***Site License Agreement:*** The site specific license that incorporates the Standard Recitals and the Standard Terms for Providers to install and operate Wireless Facilities in the City's ROW (*see* three available forms set forth in Exhibits A-1, A-2 and A-3).

***Small Wireless Facility:*** A Wireless Facility that meets both of the following qualifications:

- a. All antennas are located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of not more than six (6) cubic feet in volume.
- b. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume, or fifty (50) cubic feet in volume if the equipment was ground mounted before the effective date of this section. The following types of associated ancillary equipment are not included in the calculation of equipment volume pursuant to this subdivision:
  - i. An electric meter.
  - ii. Concealment elements.
  - iii. A telecommunications demarcation box.
  - iv. Grounding equipment.
  - v. A power transfer switch.
  - vi. A cutoff switch.
  - vii. Vertical cable runs for the connection of power and other services.

***Third Party Areas:*** The portions of the ROW, such as canal crossings or other areas that for any reason have limited ROW dedications or that have regulatory use restrictions imposed by a third party.

***Violation Use Fee:*** The types of fees that the City has available to remedy certain breaches of the Agreement by a Provider.

***Wireless Facility:***

- a. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:
  - i. Equipment associated with wireless communications.
  - ii. Radio transceivers, antennas, coaxial or fiber-optic cables, regular

and backup power supplies and comparable equipment, regardless of technological configuration.

- b. Includes small wireless facilities.
- c. Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.
- d. Does not include Wi-Fi radio equipment described in Section 9-506, Subsection I or microcell equipment described in Section 9-584, Subsection E.

***Wireless Infrastructure Provider.*** Any person that is authorized to provide telecommunications service in this state and that builds or installs wireless communications transmission equipment, wireless facilities, utility poles or monopoles but that is not a wireless service provider. Wireless Infrastructure Provider does not include a special taxing district.

***Provider.*** A cable operator, wireless infrastructure provider or wireless services provider.

***Provider's Improvements.*** All improvements installed by the Provider, including, but not limited to: all elements of the wireless facility, all screening elements, any landscaping plants or materials, and any other elements provided by the Provider in the approved Agreement.

***Wireless Services.*** Any services that are provided to the public and that use licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

***Wireless Services Provider.*** A person that provides wireless services. Wireless Services Provider does not include a special taxing district.

***Wireless Support Structure:***

- a. A freestanding structure, such as a monopole.
- b. A tower, either guyed or self-supporting.
- c. A sign or billboard.
- d. Any other existing or proposed structure designed to support or capable of supporting small wireless facilities.
- e. Does not include a utility pole.

2. **Use Areas.** Upon approval of an Antenna Site ROW License Agreement ("Agreement"), City grants to Provider a license to use the Use Areas as follows:

A. **Limitations.** Notwithstanding anything herein to the contrary, the Use Areas

include and are limited to only certain areas that Provider is permitted to exclusively use and occupy (“Exclusive Areas”) and certain areas that Provider is permitted to use on a shared basis (“Shared Areas”). The Use Areas are defined by the Boundary Plan.

B. Use Areas Boundary. The Use Areas is the smallest geometric shape that includes the Exclusive Areas and the Shared Areas. The Use Areas excludes other parts of the Street Parcel and all other land. Provider shall not occupy or use any other portion of the Street Parcel or adjoining lands. This Agreement does not allow any use of Provider’s land outside the Street Parcel. If any portion of Provider’s work, improvement or equipment is to be located on other land, then such work, improvements and equipment are prohibited unless Provider first obtains from the owner of said land (including City, if applicable) an agreement allowing such work, improvements and equipment (a “Supplemental Parcel Agreement”).

C. Exclusive Areas. The Exclusive Areas are limited to the following, if and as defined by the Boundary Plan:

i. The land area defined as “Enclosure” on the Boundary Plan to be used by Provider solely for the enclosure housing the electronic ground equipment shown on the Site Plan (“Enclosure”). Such area is confined to the actual area occupied by the exterior structure and the interior of the enclosure. If the Boundary Plan does not show a clearly defined and correctly labeled enclosure area, then no enclosure area is available for Provider’s use under an approved Agreement and any enclosure for Provider’s use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

ii. The area on the Pole defined as “Antennas” on the Boundary Plan to be used by Provider solely for mounting the Antennas. Such area is confined to the City approved elevations and locations actually occupied by the Antennas and their supporting brackets. If the Boundary Plan does not show a clearly defined and correctly labeled “Antennas” area, then no main antennas area is available for Provider’s use under this Agreement and any main antennas for Provider’s use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

D. Shared Areas. Shared Areas are limited to the following areas, if and as defined by the Boundary Plan:

i. A motor vehicle Parking space (“Parking Space”) at the Parking Space location described on the Boundary Plan to be used by Provider solely for parking a service vehicle to service the Communications Equipment and for ingress and egress to that Parking Space.

ii. No temporary construction area is provided by these Standard Terms or an approved Agreement. Provider must obtain from City a separate written document giving Provider permission to work in the ROW, as described

elsewhere herein.

iii. An underground cable route ("Signal Route") labeled as the Signal Route described on the Boundary Plan from the Enclosure to the Antenna to be used by Provider solely for underground RF lines between the Enclosure and the Antenna. Notwithstanding the preceding sentence, the portion of the Signal Route upon the Pole shall not be underground but shall be within the Pole. If the Boundary Plan does not show a clearly defined and correctly labeled Signal Route area, then no signal route area is available for Provider's use under these Standard Terms or an approved Agreement and any signal route for Provider's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

E. Power and Telephone Service. Nothing herein grants permission for any portion of the power, telephone or other service routes, if any. (Use of the public street ROW or public utility easements for these purposes, if any, is governed by normal City ROW rules and policies and by the franchise between the City and the electrical and telephone service providers.)

F. Rights in Adjacent Land. Provider's rights are expressly limited to the real property defined as the "Use Areas" in this Agreement. Without limitation, in the event any public ROW or other public or private property at or adjacent to the Use Areas is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by City, such property shall not accrue to Provider but shall be City's only.

G. Variation in Area. In the event the Use Areas consist of more or less than any stated area, Provider's obligations hereunder shall not be increased or diminished.

H. Condition of Title. Provider shall not have power to amend, modify, terminate or otherwise change the Site Documents or create new Site Documents. City does not warrant its own or any other person's title to or rights to use the Use Areas or any other property. Provider shall pay, indemnify, defend and hold harmless City and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs that arise from or relate to Provider's non-compliance with the Site Documents.

I. Condition of Use Areas. The Use Areas are being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

J. No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties,



Provider's rights herein are limited to use and occupation of the Use Areas for the Permitted Uses. Provider's rights in the Use Areas are limited to the specific rights created herein as an approved Agreement.

K. Limited Rights in Use Areas. An approved Agreement grants Provider no rights to or use of the Use Areas other than those expressly granted herein.

L. Reserved Right and Competing Users and Activities. Notwithstanding anything herein to the contrary, City specifically reserves to itself and excludes from an approved Agreement a non-exclusive delegable right ("Reserved Right") over the entire Use Areas for all manner of real and personal improvements and for streets, sidewalks, trails, landscaping, utilities and every other land use of every description. Without limitation:

i. Competing Users. Provider accepts the risk that City and others ("Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the ROW unavailable for Provider's use.

ii. Competing Activities. Provider accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas ("Competing Activities"). The Competing Activities include without limitation any and all laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning or other dealing with any or all of the following, whether above, upon or below the surface of the Use Areas and whether occasioned by existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land:

a. All manner of streets, alleys, sidewalks, trails, ways, traffic control devices, subways, tunnels, trains and gates of every description, and all manner of other transportation facilities and their appurtenances.

b. All manner of pipes, wires, cables, conduits, sewers, pumps, valves, switches, conductors, connectors, poles, supports, access points and guy wires of every description, and all manner of other utility facilities and their appurtenances.

c. All manner of canals, drains, bridges, viaducts, overpasses, underpasses, culverts, markings, balconies, porches, overhangs and other encroachments of every description and all manner of other facilities and their appurtenances.

d. All other uses of the ROW that City may permit from time to time.

iii. City's Rights Cumulative. All of City's Reserved Rights under various provisions of this Site License herein shall be cumulative to each other.

iv. Use Priorities. These Standard Terms do not grant to Provider or establish for Provider any exclusive rights or priority in favor of Provider to use the Use Areas. Provider shall not obstruct or interfere with or prevent any Competing User from using the Use Areas.

v. Regulation. City shall have full authority to regulate use of the Use Areas and to resolve competing demands and preferences regarding use of the Use Areas and to require Provider to cooperate and participate in implementing such resolutions. Without limitation, City may take any or all of the following into account in regulating use of the Use Areas:

a. All timing, public, operational, financial and other factors affecting existing and future proposals, needs and plans for Competing Activities.

b. All other factors City may consider relevant, whether or not mentioned in this Agreement.

c. Differing regulatory regimes or laws applicable to claimed rights, public benefits, community needs and all other factors relating to Competing Users and Competing Activities.

vi. Communications Equipment Relocation. Upon one hundred eighty (180) calendar days notice from City, Provider shall temporarily or permanently relocate or otherwise modify the Communications Equipment Relocation (the "Relocation Work") as follows:

a. Provider shall perform the Relocation Work at its own expense when required by City's city manager or designee.

b. The Relocation Work includes all work determined by City to be necessary to accommodate Competing Activities, including without limitation temporarily or permanently removing, protecting, supporting, disconnecting or relocating any portion of the Communications Equipment.

c. City may perform any part of the Relocation Work that has not been performed within the allotted time. Provider shall reimburse City for its actual costs in performing any Relocation Work. City has no obligation to move Provider's, City's or others' facilities.

d. City and not Provider shall be entitled to use any of Provider's facilities that are abandoned in place or that are not relocated on City's request.

e. All Relocation Work shall be subject to and comply with all

other provisions of this Agreement.

vii. Disruption by Competing Users. Neither City nor any agent, contractor or employee of City shall be liable to Provider, its customers or third parties for any service disruption or for any other harm caused them or the Communications Equipment due to Competing Users or Competing Activities.

viii. Emergency Disruption by City. City may remove, alter, tear out, relocate or damage portions of the Communications Equipment in the case of fire, disaster, or other emergencies if City's city manager or designee deems such action to be reasonably necessary under the circumstances. In such event, neither City nor any agent, contractor or employee of City shall be liable to Provider or its customers or third parties for any harm so caused to them or the Communications Equipment. When practical, City shall consult with Provider in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Communications Equipment. In any event, City shall inform Provider after such actions. Provider's work to repair or restore the Communications Equipment shall be Relocation Work.

ix. Public Safety. If the Communications Equipment or any other Provider equipment, improvements or activities present any immediate hazard or impediment to the public, to City, to City's equipment or facilities, to other improvements or activities within or without the Use Areas, or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety or other public health, safety and welfare functions, then Provider shall immediately remedy the hazard, comply with City's requests to secure the Street Parcel, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment. Provider's work crews shall report the Use Areas within four (4) hours of any request by City under this paragraph ("Safety Paragraph").

M. Third Party Permission. There may be portions of the ROW, such as canal crossings or other areas that for any reason have limited ROW dedications or that have regulatory use restrictions imposed by a third party. Areas subject to such restrictions or regulations by third parties are referred to as third party areas and communications equipment may not be built without permission from the third party or third parties that have property rights or regulatory authority over a specific third party area. Provider's right to use any Use Areas shall be suspended, but not its obligations with respect thereto, during any period that a third party permission is not in effect.

3. Term of Agreement. The term of each Agreement shall be as follows:

A. Original Term. The original term of each Agreement shall be for a period of ten (10) years commencing on the effective date stated herein.

**B. Extensions.** The term of each Agreement may be extended as follows:

- i. The term of each Agreement may be extended for one (1) additional ten (10) year period subject to consent by City and Provider, which either may withhold in its sole and absolute discretion.
- ii. Both City and Provider shall be deemed to have elected to extend unless City or Provider, respectively, gives notice to the contrary to the other at least ninety (90) calendar days prior to the end of the original term or the current extension.
- iii. The second term shall begin ten (10) years plus one (1) calendar day after the initial effective date.

**C. Holding Over.** In any circumstance whereby Provider would remain in possession or occupancy of the Use Areas after the expiration of this Agreement, (as extended, if applicable), such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a use right from month to month that may be terminated at any time by City upon thirty (30) calendar days notice to Provider, or by Provider upon sixty (60) calendar days notice to City.

**D. City's Right to Cancel.** Notwithstanding anything contained herein to the contrary, City shall have the unconditional right, with or without cause, to terminate any Agreement for any reason whatsoever or for no reason upon one hundred eighty (180) calendar days notice given at any time after the first one hundred eighty days (180) calendar days.

**E. Provider's Right to Cancel.** Provider shall have the unilateral right to terminate any Agreement without cause upon thirty (30) calendar days written notice. Provider has no right to terminate any time after an event of default by Provider has occurred (or an event has occurred that would become a default after passage of time or giving of notice).

**4. Provider's Payments.** Provider shall make payments to City as follows:

**A. Use Fee Items.** Provider shall pay to City each of the following separate and cumulative amounts (collectively "Use Fee"):

- i. An annual amount ("Base Use Fee").
- ii. An amount ("Ordinary Permit Use Fee") based on Provider's permit review and other costs as set out below.

iii. An amount (“Violation Use Fee”) based on certain breaches by Provider of this Agreement as set out below.

iv. All other amounts required by this Agreement.

B. Base Use Fee Amount. The amount of Base Use Fee Provider shall pay to City for each year of this Agreement shall be the total of all applicable fee line items for wireless communications facilities (including without limitation “antenna base fee” and “ground equipment fee”, as applicable) as set out in the then current fee schedule as it may be amended from time to time by city council.

C. Ordinary Permit Use Fee Amount. The amount of the Ordinary Permit Use Fee shall be the total amount of all applicable ordinary fees payable to City for City’s review of plans, issuance of permits, and inspection of Provider’s work upon the Use Areas (including, without limitation, encroachment permits) as set out in the then current fee schedule in Chapter 4 of the Apache Junction City Code, Vol. I as it may be amended from time to time by city council. The Permit Use Fee for SWF as defined in A.R.S. § 9-591(19) shall be Seven Hundred Fifty Dollars (\$750.00) and the Permit Use Fee for wireless sites under A.R.S. § 9-594 shall be One Thousand Dollars (\$1,000.00).

D. Adjustments. Violation Use Fee and other fixed dollar amounts stated herein shall be automatically adjusted upward on each annual anniversary of this Agreement. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (“CPI-U”), U.S. City Average, all items, published by the United States Bureau of Labor Statistics (“Cost of Living Index”). Any delayed adjustment shall be effective retroactively. Insurance coverages shall be adjusted only once every five (5) years and shall be rounded up to the nearest million dollars.

E. Use Fee Cumulative. All items of Use Fee shall be cumulative and separate from each other.

F. Use Fee Schedule. Except as specifically provided elsewhere for Violation Use Fee, Provider shall pay all Use Fee on the following schedule:

i. Provider shall pay Base Use Fee and Ordinary Permit Use Fee at the times and in the amounts specified by City’s normal processes for Base Use Fee and Ordinary Permit Use Fee.

ii. All other Use Fee shall be payable quarterly in arrears on the last day of the first month of the next calendar quarter. For example, the Violation Use Fee for the first calendar quarter of a year, if any, shall be payable on or before April 30<sup>th</sup>.

G. Letter of Credit. The Initial Letter of Credit amount shall be based upon

the Provider's good faith projection of the number of sites to be constructed within the City of Apache Junction during the current calendar year. The Initial Letter of Credit shall be received by the City from a local bank branch within the city limits before any construction and encroachment permits are issued as follows:

i. The amount of the letter of credit shall be as follows: Thirty Thousand Dollars (\$30,000.00) for up to ten (10) wireless sites; Sixty Thousand Dollars (\$60,000.00) for eleven (11) to twenty (20) wireless sites; One Hundred Five Thousand Dollars (\$105,000.00) for twenty one (21) to thirty five (35) wireless sites; One Hundred Eighty Thousand Dollars (\$180,000.00) for thirty six (36) to sixty (60) wireless sites; Three Hundred Thousand Dollars (\$300,000.00) for sixty one (61) to one hundred (100) wireless sites; Four Hundred Fifty Thousand Dollars (\$450,000.00) for one hundred one (101) to one hundred fifty (150) wireless sites; Six Hundred Seventy Five Thousand Dollars (\$675,000.00) for one hundred fifty one (151) to two hundred twenty five (225) wireless sites; One Million Fifty Thousand Dollars (\$1,050,000.00) for two hundred twenty six (226) to three hundred fifty (350) wireless sites; One Million Five Hundred Thousand Dollars (\$1,500,000.00) for three hundred fifty one (351) to five hundred (500) wireless sites; Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) for five hundred one (501) to seven hundred fifty (750) wireless sites; and Three Million Dollars (\$3,000,000.00) for seven hundred fifty one (751) to one thousand (1,000) wireless sites. If the number of Provider's wireless sites is more than one thousand (1,000), the Three Million Dollar (\$3,000,000.00) letter of credit shall remain in effect and the letter of credit for the wireless sites in excess of one thousand sites shall be calculated using the schedule provided in this subsection.

a. The City will determine at least once annually if the number of Provider's wireless sites that are licensed require that the letter of credit be upgraded to a higher amount. If City requires a new letter of credit, it shall provide formal notice in writing to the Provider. The Provider must provide the new letter of credit within forty-five (45) calendar days of receiving written notice.

ii. The letter of credit is a security deposit for Provider's performance of all of its obligations under these Standard Terms within the City of Apache Junction.

iii. The letter of credit shall meet the requirements listed on Exhibit B attached hereto.

iv. Provider shall provide and maintain the letter of credit during the entire term of each Agreement as follows:

a. Provider shall cause the original letter of credit to be delivered to City Engineer.

- b. Provider shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.
  - c. Within ten (10) business days after City gives Provider notice that City has drawn on the letter of credit, Provider shall cause the letter of credit to be replenished to its prior amount.
- v. City may draw on the letter of credit upon any event of default, and in the following circumstances whether or not they are an event of default:
  - a. Provider fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by these Standard Terms.
  - b. Provider fails to make monetary payments as required by these Standard Terms.
  - c. The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.
- vi. City shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

H. Late Fees. Use Fee is deemed paid only when City actually receives good cash payment. Should any Use Fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100.00). Furthermore, any Use Fee that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1.5%) per month from the date the amount first came due until paid. Provider expressly agrees that the foregoing represent fair and reasonable estimates by City and Provider of City's costs (such as accounting, administrative, legal and processing costs, etc...) in the event of a delay in payment of Use Fee. City shall have the right to allocate payments received from Provider among Provider's obligations.

I. Use Fee Amounts Cumulative. All amounts payable by Provider hereunder or under any tax, assessment or other existing or future ordinance, law or other contract or obligations to the City of Apache Junction or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

5. Use Restrictions. Provider's use and occupation of the Use Areas shall in all respects conform to all and each of the following cumulative provisions:

A. Permitted Uses. Provider shall use the Use Areas solely for the Permitted Uses and shall conduct no other activity at or from the Use Areas.

B. Enclosure Use. Provider shall use the Enclosure solely for locating utility cabinets and housing the Communications Equipment used for the Antennas.

C. Small Wireless Facility. Provider may install a SWF, as defined in A.R.S. § 9-591(19), to be limited to:

- i. All antennas, including the antenna's exposed elements, are located inside an enclosure of not more than six (6) cubic feet in volume, and
- ii. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume.
  - a. The following ancillary equipment is not included in the equipment volume: electric meter, concealment elements, telecom demarcation box, grounding equipment, power transfer switch, cutoff switch, and vertical cable runs.

D. Communications Operations Restriction. Provider shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Provider shall immediately discontinue using the equipment, methodology or technology that causes the interference until Provider takes corrective measures to alter the Communications Equipment to eliminate such interference. Any such corrective measures shall be made at no cost to City. Provider shall give to City notice containing a list of the radio frequencies Provider is using at the Use Areas and shall give notice to City of any change in frequencies.

E. Other Equipment. Provider shall not disturb or otherwise interfere with any other antennas or other equipment City may have already installed or may yet install upon the Street Parcel.

F. Signs. All signage is prohibited except in compliance with the following requirements:

- i. Provider shall install and thereafter maintain the following signs and other markings as reasonably determined by City from time to time:
  - a. All signs and markings required for safe use of the Use Areas by City, Provider and other persons who may be at the Use Areas at any time for any reason.
  - b. Any signage City may request directing parking, deliveries and other



vehicles and other users to comply with this Agreement.

c. Warning signs listing only Provider's name, permanent business address, telephone number, emergency telephone number, and any information required by law.

ii. All signage not expressly allowed by these Standard Terms is prohibited.

iii. The location, size, content and style of each sign shall be subject to the provisions of the applicable sign ordinance and shall comply with City's sign programs as the same may change from time to time. Provider shall update signs as required to comply with changes in the applicable sign ordinance and City's sign programs.

iv. Provider shall design, make, install and maintain all signage in a first class, professional manner without broken panels, faded or peeling paint or other damage.

v. Provider shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by City pursuant to these Standard Terms.

vi. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage.

G. Provider's Lighting. Except for security lighting operated with City's approval from time to time, Provider shall not operate outdoor lights at the Use Areas.

H. Noise. Except during construction permitted under this Agreement and for burglar alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited. All equipment shall be operated so that sound coming therefrom does not exceed the ambient noise level at the boundary of the Street Parcel and cannot be heard at the closer of i) the exterior boundary of the Street Parcel or ii) two hundred feet (200') outside the boundary of the Street Parcel. The preceding sentence does not apply to use of normal, properly maintained construction equipment used as permitted by an approved Agreement, to infrequent use of equipment that is as quiet or quieter than a typical well maintained gasoline powered passenger automobile, to use of an air conditioning unit that is no noisier than a typical well maintained residential air conditioning unit.

I. Limited Access. It is Provider's and not City's responsibility to keep unauthorized persons from accessing the Communications Equipment and the Exclusive Areas.

J. Standards of Service. Provider shall operate the Use Areas in a first-class

manner, and shall keep the Use Areas attractively maintained, orderly, clean, neat and tidy at all times. Provider shall not allow any person or persons in or about the Use Areas related to Provider's operations who shall fail to be clean, courteous, efficient and neat in appearance.

**K. Provider's Agent.** Provider shall at all times retain on-call available to City by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Communications Equipment and who shall be authorized to represent and act for Provider in matters pertaining to all emergencies and the day-to-day operation of the ROW and all other matters affecting approved Agreement. Provider shall also provide notice to City of the name, street address, electronic mail address, and regular and after hours telephone number of a person to handle Provider's affairs and emergencies at the ROW. Any change shall be given in writing to City Engineer in the manner stated for notices required herein.

**L. Coordination Meetings.** Provider shall meet with City and other ROW users from time to time as requested by City to coordinate and plan construction on the Use Areas and all matters affected by these Standard Terms. Without limitation, Provider shall attend City's scheduled utility planning meetings.

**M. Toxic Substances.** Provider's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601, *et seq.*, or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

- i. Provider understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. City has made no warranties as to whether the Use Areas contain actual or presumed asbestos or other Toxic Substances.
- ii. Within twenty-four (24) hours after discovery by Provider of any Toxic Substances, Provider shall report such Toxic Substances to City in writing. Within fourteen (14) calendar days thereafter, Provider shall provide City with a written report of the nature and extent of such toxic substances found by Provider.
- iii. **Disturbance of Toxic Substances.** Prior to undertaking any construction or other significant work, Provider shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Provider shall cause the

contractor or other person performing such work to give to City notice by the method described in these Standard Terms to the effect that the person will inspect for Toxic Substances, will not disturb Toxic Substances, and will indemnify, defend and hold City harmless against any disturbance in Toxic Substances in the course of the contractor's or other person's work. Provider shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Provider in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Provider shall promptly deliver to City copies of all reports or other information regarding Toxic Substances.

N. Required Operation. During the entire term of each Agreement and any renewals or extensions, Provider shall actively and continuously operate the Communications Equipment twenty-four (24) hours a day, seven (7) days a week, for the Permitted Uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be effective commencing on the earlier of completion of the Project or the Completion Deadline and shall continue through the date the Agreement terminates or expires for any reason. In the event of relocation of the Communications Equipment or damage to the Use Areas severe enough that the Communications Equipment cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during the time specified by these Standard Terms for accomplishing repair of such damage to relocation of the Communications Equipment. Provider may temporarily cease operating the Communications Equipment for short periods necessary to test, repair, service or upgrade the Communications Equipment.

O. Actions by Others. Provider shall be responsible to ensure compliance with these Standard Terms by all persons using the ROW through or under Provider or these Standard Terms.

6. Provider's Improvements Generally. All of Provider's improvements and other construction work whether or not specifically described herein upon or related to the Use Areas (collectively "Provider's Improvements") shall comply with the following:

A. Provider's Improvements. Provider's Improvements include without limitation, all modification, replacement, repairs, installation, construction, grading, structural, utility, lighting, plumbing, sewer or other alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description and all installation or alteration of the Communications Equipment.

B. General Approval Process. The general processes, building permit processes, ROW management policies and similar regulatory requirements that

apply to Provider's Improvements are completely separate from the plans approval processes set forth in these Standard Terms. Provider's satisfaction of any requirement set forth these Standard Terms does not substitute for compliance with any regulatory requirement. Provider's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of these standard terms. Provider must make all submittals and communications regarding the requirements of these Standard Terms through the City Engineer and not through planning, zoning, building safety or other staff. Provider shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Provider bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph, to the extent regulatory requirements and requirements of these Standard Terms are identical, compliance with regulatory requirements shall constitute compliance with these Standard Terms and vice versa.

i. Batching Sites for Approval. Only sites that do not have a new or a replacement pole required for the antennas, and do not have any underground cables, conduit, and foundations, are eligible for batch processing of the applications.

C. Relationship of Plans Approval to Regulatory Processes. Provider's submission of plans under these Standard Terms, City's approval of plans for purposes of these Standard Terms, and the plans approval process herein shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply as provided under state law, in addition to the requirements of these Standard Terms and its approvals. Building permits, zoning clearances, or any other governmental reviews or actions do not constitute approval of any plans for purposes of this Agreement.

D. City's Fixtures and Personal Property. Provider shall not remove, alter or damage in any way any improvements or any personal property of City upon the Use Areas without City's prior written approval. In all cases, Provider will repair any damage or other alteration to City's property caused by Provider or its contractors, employees or agents to as good or better condition than existed before the damage or alteration.

E. Design Requirements. All Provider's Improvements shall comply with the following design requirements:

i. All Provider's Improvements shall be contained entirely within the Use Areas and without any encroachment or dependence upon any other property, except for permitted utility service.

ii. Any changes to utility facilities shall be strictly limited to the Use Areas, shall not affect utilities used by City, and shall be undertaken by Provider at its

sole cost and expense.

iii. The Antennas and other Communications Equipment shall be properly designed, installed and maintained so as not to create a risk of damage to the Pole, to persons or property upon or using the Street Parcel or City's other property.

iv. To the extent requested by City, Provider's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Use Areas and protect other facilities at the Street Parcel and surrounding properties.

v. All specifications set forth in the City of Apache Junction Design Standards for Small Wireless Facilities in the ROW (Exhibit A).

F. Approval Required. Provider shall not construct any Provider's Improvements (including work on adjacent public lands, if applicable) without having first received written plans approval from City. Such consent requirement shall apply to all improvements, furnishings, equipment, fixtures, paint, wall treatments, utilities of every description, communications cabling and other construction work of any description as described in all plans heretofore or hereafter delivered by Provider to City. Such consent requirement does not apply to work to the Communications Equipment confined completely inside the Enclosure and not visible, audible, or otherwise discernible outside the Enclosure.

G. Effect of Plans Approval. Provider shall submit engineering and construction plans to the City for review and approval. City's approval of plans submitted shall be for purposes of these Standard Terms only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. City shall not reject subsequent plans to the extent the matter to which City objects was plainly shown on plans previously approved by City. However, City is not precluded from objecting to matters not previously approved, changes to plans, matters not previously clearly disclosed on approved plans, or refinements or implementation of matters previously approved.

H. Plans Required. Provider's design of all Provider's Improvements shall occur in three stages culminating in final working construction documents for the Provider's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

i. Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, and other features significantly affecting the appearance, design, function or operation of each element of Provider's Improvements.

ii. Preliminary plans showing all surface finishes and treatments, finished elevations, general internal and external design (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of these Standard Terms. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

iii. In addition to the information that City required for Preliminary plans, the Final Plans shall include a title report for the Use Area and the Shared Use Area, engineering design documents for the pole foundation, pole structural design, and other generally required engineering specifications for construction drawings or CD plans for permits.

I. Approval Process. The following procedure shall govern Provider's submission to City of all plans for Provider's Improvements, including any proposed changes by Provider to previously approved plans:

i. All plans Provider submits under these Standard Terms shall show design, appearance, capacity, views, and other information reasonably deemed necessary by City for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by City for the level of plans required herein.

ii. Provider shall deliver all plans submissions for non-regulatory approvals required herein directly to City Engineer and shall clearly label the submissions to indicate that they are submitted pursuant to the Standard Terms and not for building permits or other approvals. Each submittal of plans by Provider for City's review shall include five (5) complete sets of the plans on paper and, if requested, two (2) copies of the plans in electronic form.

iii. All construction plans shall be prepared by qualified registered professional engineers.

iv. City and Provider shall endeavor to resolve design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of City's ownership and other uses of the Use Areas, and as a condition of City's entering into an Agreement, final decision authority regarding all design and construction issues shall rest with City.

v. All Provider's Improvements shall comply with all requirements of law, any applicable insurance contracts and these Standard Terms.

J. Cost of Provider Improvements. All Provider's Improvements shall be designed and constructed by Provider at Provider's sole cost and expense,

including without limitation any alteration or other change to City's equipment or other improvements or personal property that may occur. In no event shall City be obligated to compensate Provider in any manner for any of Provider's Improvements or other work provided by Provider during or related to the term of any approved Agreement. Provider shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless City and City's employees, officers, contractors and agents against all claims related to such items. Provider shall bear the cost of all work required from time to time to cause the Use Areas and City's adjoining property (if directly affected by Provider's work) to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Provider, by Provider's use of the Use Areas, or by any exercise of the rights granted to Provider under this Site License Agreement.

K. Improvement Quality. Any and all work performed on the Use Areas by Provider shall be performed in a workman-like manner meeting or exceeding the best practices of similar facilities in the Phoenix metropolitan area, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Provider's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by City through the plans approval processes described in these Standard Terms in addition to any zoning, building code or other regulatory processes that may apply.

L. Ownership of Provider's Improvements. All Provider's Improvements (including without limitation poles and lights) except the Communications Equipment shall be and become part of the real property of City "brick by brick" as constructed or installed.

M. Damage During Work. Upon performing any work upon the ROW, Provider shall simultaneously restore the ROW to its prior condition, as directed by City and repair any holes, mounting surfaces or other damage whatsoever to the ROW. Such work shall include revegetation and appropriate irrigation systems for revegetated areas.

N. Replacement Pole. If City approves a Provider proposal to install Antennas on a City owned pole, then in addition to the other requirements, the following shall apply:

- i. Provider shall provide and deliver to City a replacement pole, including mast arm, so that a replacement is immediately available to City in case the original pole is damaged.
- ii. If City uses a replacement pole, then Provider shall provide another replacement pole.
- iii. Upon installation of a replacement pole, the City will determine if the original

pole, mast arm(s), signal head(s), and light fixture(s) shall be delivered by Provider to the City's Streets & Transportation Yard or if the Provider shall dispose of the original pole, mast arm, signal head and light fixture.

iv. All performance under this paragraph shall be at Provider's expense. City owns the original pole and all replacement poles.

O. Coordination with Encroachment Permit. The Street Parcel is located in City's public street ROW. An approved Agreement serves as an encroachment permit under Chapter 13 of the Apache Junction City Code to the extent of allowing Provider's Improvements to exist upon the Street Parcel. Provider shall obtain additional encroachment permits at Provider's expense as follows:

i. Provider shall perform no construction work in the ROW without obtaining from City a permit giving permission to work in the ROW.

ii. Provider shall not alter or modify its antennas, wireless equipment or any improvements without submitting plans or drawings of the proposed alteration or modification to City and obtaining approval from City's Engineer.

iii. Provider shall not perform any work on its own antennas or wireless equipment without first obtaining from City an encroachment permit giving it permission to work in the ROW.

iv. Provider shall not in any way obstruct pedestrian or vehicular traffic within the ROW without first obtaining from City a permit giving permission to obstruct traffic.

P. Time for Completion. Provider shall diligently and expeditiously pursue to completion the construction of all approved Provider's Improvements. Provider shall complete initial construction of the Project no later than the Completion Deadline. Provider shall complete construction of all of other Provider's Improvements no later than one hundred eighty (180) calendar days of permit issuance unless City and Provider agree to extend this period or a delay is caused by a lack of commercial power at the site. If City, in its sole examination of the construction activity at a site, determines that Provider has not substantially performed construction at a site within one hundred eighty (180) calendar days of the permit issuance date, City may require the Provider to cease construction and resubmit the site for approval.

Q. Construction Notification. City may establish requirements for notification of nearby residents and property owners prior to construction.

R. Work Time and Manner Restrictions. All installation, construction, maintenance, inspection, repair and other work of any kind shall be done in a manner that does not disrupt traffic (except in compliance with appropriate permits) or nearby land uses. Without limitation, such work shall be done in compliance with applicable City policies and directions from time to time, taking into account the



various sensitivities of traffic, tourism, events, adjoining land uses, other ROW uses, and all other needs and concerns that are likely to be affected by Provider's work.

**7. RF Safety for City Employees.** As City's employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon, Provider must comply with at least one of the following safety protocols:

**A. Participate in a City RF Safety Program ("City's Safety Program"),** enrollment in which shall include:

**i. A one-time contribution to the City of two (2) RF Personal Monitors, as specified below, for monitoring radio frequency emissions from Provider Facilities during the repair and maintenance of City's Facilities and ROW. The RF Personal Monitors shall be delivered to the City Engineer within sixty (60) calendar days of the issuance date of the first permit for a SWF issued to the Provider.**

**a. The RF Personal Monitor shall be a new manufactured with full original manufacturer's warranty NARDA (2271/101) – Nardalert S3 Personal & Area Monitor or equivalent device that is approved by the City.**

**b. The Provider shall provide for each Nardalert S3 Personal & Area Monitor, a protective silicon or rubberized cover, and a case to store and carry the device.**

**ii. An annual contribution of two thousand five hundred dollars (\$2,500.00) for third-party training of City employees who will work on poles that have a Wireless Facility and for the ongoing operation – including the annual recertification training of City employees, test set calibration, and test set maintenance and repair – of the City's Safety Program ("Annual Contribution").**

**a. The first annual contribution, payable to the City of Apache Junction, shall be delivered or transferred as directed by the City Engineer within sixty (60) calendar days of the issuance date of the first permit for a SWF issued to the Provider.**

**b. Each annual contribution thereafter shall be made payable to the City of Apache Junction as directed by the City Engineer on or before the anniversary date of the issuance date of the first permit for a SWF issued to the Provider.**

**iii. On each five (5) year interval of the issuance date of the first permit to install a SWF in the City, the Provider shall provide the City with one (1) additional RF Personal Monitor that meets or exceeds the requirement in Sections 7(A)(i)(a) and 7(A)(i)(b) that the City must approve prior to purchase.**

iv. Prior to performing any work on a wireless site in the ROW, the City's employee will contact the Network Operations Center ("NOC") whose information shall be located on the ground equipment or on the pole. The City's employee shall identify himself or herself as an employee of City and needs the RF to be turned off at the site for a specified period to perform maintenance or repair work at the site. Upon completion of the work, the City's employee shall contact the NOC and inform them that the site may activate the RF signals.

B. Provide access to a "kill switch" for each wireless site that the City's employees, agents, or representatives can use to turn off all power to the Provider's Facilities while City's work is performed at the location.

C. Within 24 hours of a request, agree to send a technician with an RF monitor to confirm that all RF emitting equipment has, in fact, been deactivated, and to install all appropriate lockout tags and devices.

8. Maintenance and Utilities. Except as expressly provided below, Provider shall be solely responsible for all maintenance, repair and utilities for the Use Areas during the term of an approved Agreement. Without limitation, Provider shall perform the following:

A. Maintenance by City. City has no maintenance or repair obligations for the Communications Equipment or other Provider's Improvements.

B. Maintenance by Provider. Provider shall at all times repair and maintain the Use Areas at Provider's sole expense in a first-class, sound, clean, safe and attractive manner, meeting or exceeding the manner of maintenance at first class comparable facilities in the Phoenix metropolitan area, as determined in City's reasonable discretion. The preceding sentence does not require Provider to repair or maintain City's facilities at the License Area unless such work is attributable in whole or in part to Provider's use of the Use Areas.

C. Utility Service. Provider shall contract for and pay all charges, fees, deposits and other amounts for electricity and telephone and other data communication service to the Use Areas at the rates applicable thereto. Provider shall use no other utilities at the Use Areas.

D. Utility Interruptions. City is not responsible for any interruption of utilities to or upon the Use Areas or other difficulties related to utilities at the Use Areas.

E. Right of Inspection. City shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms herein, the public works code, or other Telecommunications Laws. All City plans reviews, inspections, standards and other rights and actions with relation to Provider's Improvements are for City's sole and

exclusive benefit and neither Provider nor any other person shall rely thereon or have any rights related thereto. The preceding sentence does not prevent Provider from relying on consents, permits or approvals City may grant based on City's plans, reviews, and inspections. This right of access is in addition to access rights for City inspectors or other employees and officers acting within their legal authority.

F. Construction Notification. City may establish requirements for Provider to notify nearby residents prior to construction.

G. Blue Stake. Provider shall register with and comply with the local Blue Stake program.

9. Breach by Provider. Provider shall comply with, perform and do each obligation required of Provider herein and shall cause all persons using the Use Areas through or under Provider or these Standard Terms to do the same. Provider's failure to do so shall be a material breach by Provider of these Standard Terms.

A. Events of Default. All Site Licenses are approved upon the condition that each and every one of the following events herein shall be deemed an "Event of Default" by Provider of Provider's material obligations under these Standard Terms:

i. If Provider shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) calendar days after City has notified Provider of such arrearage.

ii. If Provider shall fail to operate the Communications Equipment (except during specific periods expressly excused herein) for a period of three (3) consecutive days or a total of five (5) calendar days within any twelve (12) month period.

iii. If Provider shall fail to maintain any insurance required under these Standard Terms. Notwithstanding the preceding sentence, such failure shall not be a default if within five (5) business days after notice from City, Provider provides to City the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by these Standard Terms.

iv. If a Pole ROW Agreement, Pole Antenna Agreement or Supplemental Parcel Agreement shall expire or be terminated for any reason.

v. If Provider does not commence and diligently pursue to completion each required stage of construction of the site within the times required herein. The times specified for concluding each stage of required construction have been established far enough in advance, and have taken into account the likelihood of construction delays, so that no cure period is provided.

vi. If Provider shall be the subject of a voluntary or involuntary bankruptcy,

receivership, insolvency or similar proceeding or if any assignment of any of Provider's or such other person's property shall be made for the benefit of creditors or if Provider or such other person dies or is not regularly paying its debts as they come due (collectively a "Provider Insolvency").

vii. If the issuer of any letter of credit shall fail for any reason to timely and fully honor any request by City for funds or other performance under the instrument and Provider fails to cause the issuer to or some other person to honor the request within ten (10) calendar days after City notifies Provider that such request has not been honored.

viii. If Provider shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW and shall not cure such failure within thirty (30) calendar days.

ix. If City shall be exposed to any liability, obligation, damage, cost, expense, or other claim of any description, whether or not asserted, unless Provider gives immediate notice to City of Provider's commitment to indemnify, defend and hold City harmless against such claim Provider does in fact promptly commence and continue to indemnify, defend and hold City harmless against such claim and, Provider delivers to City with said notice bonds or other financial security in City's reasonable discretion adequate to assure that Provider will indemnify, defend and hold City harmless against such claim and adequate to protect City and the Use Areas from adverse consequences of such claim.

x. If Provider shall fail to meet its obligations under the RF Safety Paragraph.

xi. If Provider shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After City has once given notice of any failure by Provider to comply with its obligations set forth in these Standard Terms, the following shall constitute a repeated failure by Provider to comply with such provision:

a. Another failure to comply with any provision of these Standard Terms during the following thirty (30) calendar day period.

b. Three (3) or more failures to comply with any provision of these Standard Terms during any ninety (90) calendar day period.

c. Six (6) or more failures to comply with any provision of these Standard Terms during any twelve (12) month period.

xii. If Provider shall fail to or neglect to timely and completely do or perform or observe any other provisions herein and such failure or neglect shall continue for a period of thirty (30) calendar days after City has notified

Provider in writing of such failure or neglect.

**B. City's Remedies.** Upon the occurrence of any Event of Default or at any time thereafter, City may, at its option and from time to time, exercise at Provider's expense any or all or any combination of the following cumulative remedies in any order and repetitively at City's option:

i. Terminate any or all Site Licenses due to Provider's breach or for any other reason does not terminate Provider's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Provider's liability related to any breach of these Standard Terms.

ii. Pay or perform, for Provider's account, in Provider's name, and at Provider's expense, any or all payments or performances required hereunder to be paid or performed by Provider.

iii. Abate at Provider's expense any violation of these Standard Terms.

iv. Notwithstanding anything under these Standard Terms to the contrary, unilaterally and without Provider's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter of credit, escrowed funds, insurance policies, or other deposits, sureties, bonds or other funds or security held by City or pledged or otherwise obligated to City by Provider or by any third party (whether or not specifically mentioned herein) and use the proceeds for any remedy permitted by these Standard Terms.

v. Require an additional security deposit adequate in City's sole discretion to protect City and the ROW.

vi. Assert, exercise or otherwise pursue at Provider's expense any and all other rights or remedies, legal or equitable, to which City may be entitled, subject only to the limitation set out below on City's ability to collect money damages in light of the Violation Use Fee.

**C. Violation Use Fee.** In lieu of certain money damages (the "Inconvenience Costs") set out below, the following shall apply to Provider's violation of certain limited requirements of these Standard Terms (the "Violation Fee Provisions"):

i. The Inconvenience Costs are the money damages that City suffers in the form of administrative cost and inconvenience, disharmony among Competing Users, and general inconvenience in ROW use by City, Competing Users and the public when Provider fails to comply with the Violation Fee Provisions.

ii. Provider's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of Provider paying

to City as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Provider shall pay Violation Use Fee.

iii. Violation Use Fee is only intended to remedy Inconvenience Costs that City suffers because of Provider's breach of the Violation Fee Provisions. Provider's payment of Violation Use Fee does not in any way excuse any breach by Provider of these Standard Terms or limit in any way Provider's obtaining any other legal or equitable remedy provided by these Standard Terms or otherwise or such breach. For example, Provider's obligation to pay Violation Use Fee does not in any way detract from Provider's indemnity and insurance obligations under these Standard Terms, which shall apply according to their terms in addition to Provider's obligation to pay Violation Use Fee.

iv. Provider may elect to draw upon the letter of credit to collect the Violation Use Fee.

v. The Violation Fee Provisions and the amount of the Violation Use Fee per day or part thereof are as follows:

a. The amount of Six Hundred Dollars (\$600.00) per day for Provider's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) business days after City's notice to correct such defects. Such Violation Use Fee shall be in addition to any cost the City may incur to restore the ROW or correct the violation.

b. The amount of Two Hundred Fifty (\$250.00) per day for each failure to make Provider's books and records available as required by this Agreement.

c. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Provider contrary to these Standard Terms herein, that causes Inconvenience Costs and that is not cured after three (3) business days' notice.

vi. Violation Use Fees shall be assessed as follows:

a. If City determines that Provider is liable for Violation Use Fee, then City shall issue to Provider a notice of City's assessing a Violation Use Fee. The notice shall set forth the nature of the violation and the amount of the assessment.

b. Provider shall pay the Violation Use Fee within ten (10) calendar days after City's notice. However, if the Violation Use Fee amount exceeds Five Thousand Dollars (\$5,000), then the following shall apply:

c. Provider shall have thirty (30) calendar days after the notice to pay

the Violation Use Fee or give City notice contesting the assertion of noncompliance.

d. If Provider fails to respond to the notice, Provider shall pay the Violation Use Fee. Otherwise, City shall schedule a public hearing to investigate whether the Violation Use Fee is properly assessed. City shall provide Provider at least ten (10) calendar days notice of such hearing, which shall specify the time, place and purpose of the hearing. At the hearing, Provider shall be provided an opportunity to be heard and present evidence. If the result of the hearing is that Provider is liable for Violation Use Fee, then the Violation Use Fee is due ten (10) calendar days after the hearing decision is announced.

D. Non-waiver. Provider acknowledges Provider's unconditional obligation to comply with these Standard Terms herein. No failure by City to demand any performance required of Provider under these Standard Terms herein, and no acceptance by City of any imperfect or partial performances under these Standard Terms herein, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with these Standard Terms herein. No acceptance by City of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right City may have for additional, different or further payments or performances as provided for in these Standard Terms. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Provider shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent City from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by City or Provider concerning payments or other performances due hereunder, or failure by City to demand any performance hereunder, shall excuse Provider from compliance with its obligations nor estop City (or otherwise impair City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. Provider expressly disclaims and shall not have the right to rely on any supposed waiver or other change or modification, whether by word or conduct or otherwise, not conforming to this paragraph.

E. Reimbursement of City's Expenses. Provider shall pay to City within thirty (30) calendar days after City's demand any and all amounts expended or incurred by City in performing Provider's obligations (upon Provider's failure to perform the same after notice from City) together with interest thereon at the rate of twelve percent (12%) per annum from the date expended or incurred by City.

F. Breach by City. Notwithstanding anything in these Standard Terms to the contrary, if City at any time is required to pay to Provider any amount or render any

performance, such amount or performance is not due until thirty (30) calendar days after notice by Provider to City that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, City shall not be in default so long as City commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) calendar days after the notice.

G. Right to Setoff and Credit. In addition to its other rights and remedies City shall have the right to setoff and credit from time to time and at any time, any and all amounts due from Provider to City, whether pursuant to these Standard Terms herein or otherwise, against any sum which may be due from City to Provider.

10. Termination. The following provisions shall apply at the expiration of the term of each Site License:

A. Surviving Obligations. Expiration or termination of a Site License does not terminate Provider's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

B. Delivery of Possession. Provider shall cease using the Use Areas of the expired or terminated Site License. Provider shall without demand, peaceably and quietly quit and deliver up the Use Areas to City thoroughly cleaned, in good repair with the Use Areas maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the Use Areas now are or in such better condition as the Use Areas may hereafter be placed.

C. Confirmation of Termination. Upon expiration or termination of an Agreement for any reason, Provider shall provide to City upon demand recordable disclaimers covering the Use Areas executed and acknowledged by Provider and by all persons claiming through this Agreement or Provider any interest in or right to use the Use Areas.

D. Removal of Improvements. Provider shall remove all Communications Equipment and restore the Use Areas including pole, mast arms, luminaires, or wireless support structure to its prior condition, or to a condition matching City's surrounding land and improvements, as directed by City, at Provider's expense prior to normal expiration of the term of a Site License or within thirty (30) calendar days; after termination of an Agreement for any other reason whatsoever. Without limitation, such work shall include revegetation and appropriate irrigation systems for revegetated areas. Notwithstanding anything in these Standard Terms to the contrary, City may elect to require Provider to leave any or all construction or other items (except the Communications Equipment) in place, and all such items shall be owned by City. Unless City directs otherwise, all wiring, pipes and conduits shall be left in good and safe condition, in working order, with each end properly labeled and enclosed in proper junction boxes.

E. Prior Improvements. This article also applies to any improvements that



Provider may have made to the Use Areas.

**11. Indemnity and Insurance.** During the entire term of any Site License, Provider shall insure its property and activities at and about the Use Areas and shall provide insurance and indemnification as follows:

**A. Insurance Required.** Not later than the date of this Agreement, and at all times thereafter when Provider is occupying or using the Use Areas in any way, Provider shall obtain and cause to be in force and effect the following insurance:

i. **Commercial General Liability.** Commercial general liability insurance with a limit of Ten Million Dollars (\$10,000,000) for each occurrence, a limit of Ten Million Dollars (\$10,000,000) for products and completed operations annual aggregate, and a limit of Ten Million Dollars (\$10,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an “insured contract” including this Agreement. The policy will cover Provider’s liability under the indemnity provisions set forth in these Standard Terms. The policy shall contain a “separation of insured’s” clause.

ii. **Automobile Liability.** Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Provider’s use of the ROW. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off-loading.

iii. **Workers' Compensation.** Such workers’ compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

iv. **Special Risk Property.** Unless waived by City in writing, all risk property insurance covering damage to or destruction of all real and personal improvements to the ROW, including without limitation, all improvements existing upon the ROW prior to this Agreement or hereafter constructed in an amount equal to full replacement cost of all such improvements. Such insurance shall be special causes of loss policy form (minimally including perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood). Coverage shall include pollutant clean up and removal with minimum limits coverage of Fifty-Thousand Dollars (\$50,000.00).

a. **Other Insurance.** Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives,

officers and agents (all of whom, including City, are collectively “Additional Insureds”), the ROW, surrounding property, Provider, or the activities carried on or about the ROW. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities might reasonably purchase.

**B. Policy Limit Escalation.** City may elect by notice to Provider to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided.

**C. Form of All Insurance.** All insurance provided by Provider with respect to the ROW, whether required in these Standard Terms or not, shall meet the following requirements:

- i. “Occurrence” coverage is required.
- ii. If Provider uses any excess insurance then such excess insurance shall be “follow form” equal to or broader in coverage than the underlying insurance.
- iii. Policies must also cover and insure Provider’s activities relating to the business operations and activities conducted away from the ROW.
- iv. Within five (5) business days of receiving a written request from the City, Provider shall provide copies of insurance certificates, insurance policies, formal endorsements or other documentation acceptable to City that all insurance coverage required herein is provided.
- v. Provider’s insurance shall be primary insurance with respect to claims arising out of Provider’s operations, activities and obligations set forth in these Standard Terms.
- vi. All policies, including workers’ compensation, shall waive transfer rights of recovery (subrogation) against City, and the other Additional Insureds.
- vii. All deductibles, retentions, or “self-insured” amounts shall be subject to the following:
  - a. Provider shall be solely responsible for any self-insurance amount or deductible.
  - b. Such amounts shall not exceed in total One Hundred Thousand Dollars (\$100,000) per loss. At such times as Provider’s net worth is more than One Hundred Million Dollars (\$100,000,000), such limit shall be One Million Dollars (\$1,000,000).
  - c. Any self-insured exposure shall be deemed to be an insured risk under

this Agreement.

d. Provider shall provide to the beneficiaries of all such amounts no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder.

e. The right to self-insure is limited and specific to Provider and does not extend to Provider's contractors or others.

viii. All policies except workers' compensation must name City and the other Additional Insureds as additional insureds. Provider shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Provider's operations, activities and obligations under these Standard Terms.

ix. All policies must require the insurer to provide City with at least thirty (30) calendar days prior notice of any cancellation. The insurer's duty to notify City of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

x. All policies shall require that notices be given to City in the manner specified for notices to City set forth in these Standard Terms.

D. Insurance Certificates. Provider shall evidence all insurance by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of these Standard Terms applicable to the policy. For example, certificates must evidence that City and the other additional insureds are additional insureds. Certificates must also be in an industry standard form reasonably acceptable to City. Provider shall provide updated certificates at City's request.

E. Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to City. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

F. No Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Provider. City reserves the right to review any and all of the insurance policies and/or endorsements cited in these Standard Terms but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in these Standard Terms or failure to identify any insurance deficiency shall not relieve Provider from, nor be construed or deemed a waiver of, Provider's obligation to maintain the required insurance at all times.

**G. Indemnity.** In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of any Site License and until all obligations and performances under or related to these Standard Terms are satisfied and all matters described in this paragraph are completely resolved, Provider and all other persons using, acting, working or claiming through or for Provider (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question) shall jointly and severally indemnify, defend and hold harmless City and all other additional insureds for, from and against any and all claims or harm related to Provider's use of the ROW or the rights granted to Provider with respect to the ROW or Provider's exercise of its rights under these Standard Terms (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the ROW or other property pursuant to any Site License or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the ROW or surrounding areas related to Provider's exercise of its rights under this Agreement, including without limitation, claims, liability, harm or damages caused in part by City or any other additional insured or anyone for whose mistakes, errors, omissions or negligence Provider or City may be liable. As a condition to City's approval of any Site License, Provider specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Provider for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Provider's use of real property under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

- i. Claims arising only from the sole gross negligence or intentionally wrongful acts of City.
- ii. Claims that the law prohibits from being imposed upon the indemnitor.

H. Risk of Loss. Provider assumes the risk of any and all loss, damage or claims related to Provider's use of the ROW or other property of City, Provider or third parties throughout the term hereof. Provider shall be responsible for any and all damage to its property and equipment related to these Standard Terms.

I. Insurance to be Provided by Others. Provider shall cause its contractors or other persons occupying, working on or about, or using the ROW pursuant to these Standard Terms to be covered by their own or Provider's insurance as required by these Standard Terms. The required policy limits for commercial general liability insurance provided by such persons shall be One Million Dollars (\$1,000,000) for each occurrence, One Million Dollars (\$1,000,000) for products and completed operations annual aggregate, and Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the ROW (such as Provider's consulting design engineers).

12. Damage to or Destruction of the Use Areas. The following provisions shall govern damage to or destruction of the Use Areas by fire, flood, explosion, the elements, the public enemy, or other casualty (collectively "Casualty Damage"):

A. Damage to Provider's Improvements. Provider shall commence restoring the Casualty Damage to Provider's Improvements within thirty (30) calendar days after any Casualty Damage occurs. Provider shall complete the restoration work within thirty (30) calendar days after commencement. Such work shall be subject to the plans approval process and all other requirements for Provider's Improvements. Provider shall perform all restoration work at Provider's sole cost and expense.

B. Monthly Restoration Work Report. Provider shall provide to City no later than the tenth day of each month a written narrative report of the progress of the restoration work.

13. Provider's Records. During the entire term of any Agreement, Provider shall keep records and provide information to City as follows:

A. Scope of Information. Unless otherwise specified, all of Provider's recordkeeping and disclosure obligations under this article are limited to the following (collectively the "Covered Information"):

- i. The status of the construction, repair or restoration of Provider Improvements.
- ii. Information indicating whether City or Provider is in compliance with the terms herein.

**B. Records Inspection.** At Provider's expense, Provider shall:

i. Permit and assist City and its representatives upon twenty-one (21) calendar days notice to inspect, audit, and copy Provider's records of Covered Information.

ii. Make the records of Covered Information (and reasonable accommodations for City's audit and inspection) available to City at Provider's offices in the Phoenix metropolitan area.

iii. Cause Provider's employees and agents and accountants to give their full cooperation and assistance in connection with City's access to the Covered Information.

**C. Record Retention.** Provider shall preserve records of the Covered Information in a secure place at Provider's corporate headquarters in the continental United States for a period ending seven (7) years after the time period reported by the records.

**D. Record Media Included.** City's and Provider's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that may contain the Covered Information. City shall have access to Covered Information contained, without limitation, in records, books, papers, documents, recordings, computer data, contracts, logs, notes, ledgers, correspondence, reports, drawings, and memoranda, and any and all other sources, records and repositories of Covered Information.

**E. Reports.** Provider shall deliver to City written reports (and, if requested by City, a presentation to City's governing council or designee) covering such Covered Information as City may request from time to time. City shall not request such reports more often than once in any twelve (12) month period.

**F. Standards for Records.** Provider shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information.

**14. Compliance with Law.** Provider shall perform its obligations under these Standard Terms in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended. Without limiting in any way the generality of the foregoing, Provider shall comply with all and each of the following:

**A. Applicability of Municipal Law.** Without limitation, Provider shall comply with municipal laws as follows:

i. Provider acknowledges nothing set forth herein constitutes, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Apache Junction or any other governmental body upon or affecting Provider, the Use Areas, or the Street Parcel or Provider's use of the Use Areas, the Street Parcel or the Rights-of-way.

ii. All of Provider's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Provider.

iii. City by this Agreement cannot and has not relinquished or limited any right of condemnation or eminent domain over the ROW or any other property related to these Standard Terms or within the ROW.

iv. This Agreement cannot and does not impair City's, power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Provider, the Use Areas, the Street Parcel, or the ROW.

v. City's rights and remedies hereunder for Provider's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the City of Apache Junction or any other governmental body.

vi. Provider's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, and all ordinances, resolutions, rules and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Use Areas or Provider's use thereof. Provider shall comply with all of the foregoing.

**B. Radio Frequency Compliance Requirements.** Provider shall document, report and confirm its compliance with Federal Communications Commission ("FCC") Radio Frequency Exposure Guidelines (FCC OET Bulletin 65) and all other applicable RF emissions laws and regulations in effect from time to time (collectively, the "FCC Rules") as follows:

i. Provider shall cause its senior internal engineer responsible for compliance with the FCC Rules to deliver to City a written letter (the "RF Letter"), as follows:

a. The RF Letter shall attest that Provider's operation of the Communications Equipment is in compliance with the FCC Rules. A statement from Wireless Provider declaring exemption from reporting to FCC is not acceptable to comply with the requirements of this paragraph.

ii. Provider shall maintain records of RF measurements and Communications Equipment performance in accordance with the FCC Rules.

iii. Provider shall also evidence and demonstrate its compliance with the FCC Rules in such manner and at such intervals as the Apache Junction City Code and other applicable laws and regulations may mandate.

C. Government Property Lease Excise Tax. Provider shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-6206, failure by Provider to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Provider of any interest in or right of occupancy of the Use Areas.

D. Use Area Regulations. City reserves the right to adopt, amend and enforce against Provider rules and regulations governing the operation of the Street Parcel, including the Use Areas, Provider's activities therein and thereon, and the public areas and facilities used by Provider in connection therewith.

E. Taxes, Liens and Assessments. In addition to all other amounts herein provided and to the extent consistent with applicable law, Provider shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of any Agreement may be levied upon or assessed upon or with respect to Provider's use of the ROW, the operations conducted therein, any amounts paid or other performances required by these Standard Terms by either party, and all possessory interest in the ROW and Provider's improvements and other property thereon. Provider shall pay, indemnify, defend and hold harmless City from any and all such obligations, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof.

F. Permits. Nothing in these Standard Terms relieves Provider of the obligation to obtain permits, licenses and other approvals from City or other units of government that are required for the erection, construction, reconstruction, installation, operation or maintenance of the Communications Equipment or provision of Telecommunications Services; or from compliance with applicable municipal codes, ordinances, laws and policies, such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, ROW permits and the like.

15. Assignability. Site License Agreements are not assignable by Provider (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:



**A. Assignments Affected.** Every assignment of any of Provider's interest in the ROW or this Agreement or any of Provider's rights or interests hereunder is prohibited unless Provider first receives from City notice of City's consent to the assignment. All references in these Standard Terms to assignments by Provider or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

- i. Any voluntary or involuntary assignment, conveyance or transfer of Provider's right to use the ROW under this Agreement or any interest or rights of City under this Agreement, in whole or in part.
- ii. Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Provider's rights to use the ROW (collectively "Liens").
- iii. Any assignment by Provider of any interest in any Agreement for the benefit of creditors, voluntary or involuntary.
- iv. A Provider Insolvency.
- v. The occurrence of any of the foregoing by operation of law or otherwise.
- vi. The occurrence of any of the foregoing with respect to any assignee or other successor to Provider.

**B. Pre-approved Assignments.** Subject to certain conditions hereafter stated, City hereby consents to certain assignments (the "pre-approved assignments"). Only the following assignments are pre-approved assignments:

- i. **Complete Assignment of Agreement.** Provider's complete assignment of all of Provider's rights and Interests in the ROW and approved Agreements to a single assignee who meets all of the following requirements, as determined by City in City's reasonable discretion (a "Qualified Operator"):
  - a. The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Provider's and adequate to successfully perform the obligations set forth herein.
  - b. The assignee is experienced in the management and operation of similar projects.
  - c. The assignee assumes all of Provider's obligations herein.

d. The assignee has a net worth of not less than Fifty Million Dollars (\$50,000,000).

ii. Stock Transfers. The transfer of publicly traded stock, regardless of quantity.

iii. Merger. The merger or consolidation of Provider with another entity that is a Qualified Operator.

iv. Common Ownership Transfer. Provider's complete assignment of all of Provider's rights and interests in the ROW and approved Agreements to single assignee who is and remains a wholly owned subsidiary of Provider's sole owner as of the date of this agreement (or a wholly owned subsidiary of a wholly owned subsidiary of Provider's sole owner as of the date of this Agreement).

C. Limitations on Assignments. City's consent to any assignment, including without limitation, pre-approved assignments, is not effective until the following conditions are satisfied:

i. Except for the sale of stock, Provider shall provide to City a complete copy of the document assigning its interests.

ii. Each assignee must execute an assumption of the Agreements in form acceptable to City.

iii. Each pre-approved assignment must satisfy all other requirements of these Standard Terms pertaining to assignments.

D. Assignment Remedies. Any assignment without City's consent shall be void and shall not result in the assignee obtaining any rights or interests. City may, in its sole discretion and in addition to all other remedies available to City under these Standard Terms or otherwise, and in any combination, terminate any and all Site Licenses, collect Use Fee from the assignee and/or declare the assignment to be void, all without prejudicing any other right or remedy of City under these Standard Terms. No cure or grace periods shall apply to assignments prohibited under these Standard Terms or to enforcement of any provision under these Standard Terms against an assignee who did not receive City's consent.

E. Effect of Assignment. Prior to any assignment, each assignee must execute an assumption of each Site License in the form attached hereto as Attachment C. No action or inaction by City shall be deemed a waiver of the prohibition on assignments or any other provision herein, or the acceptance of the assignee, Provider or occupant as Provider, or a release of Provider from the further performance by Provider of the provisions of this Agreement. Consent by City to an assignment shall not relieve Provider from obtaining City's consent to any further assignment. No assignment shall release Provider from any liability hereunder.

**F. Enforceability after Assignment.** No consent by City shall be deemed to be a novation. City's consent to any assignment does not in any way expand or modify the terms set forth in these Standard Terms or waive, diminish or modify any of City's rights or remedies under this Agreement. The terms set forth in these Standard Terms shall be enforceable against Provider and each successor, partial or total, and regardless of the method of succession, to Provider's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

**G. Grounds for Refusal.** Except for the pre-approved assignments, no assignment of any Site License by Provider is contemplated or bargained for. Without limitation, City has the right to impose upon any consent to assignment such conditions and requirements as City may deem appropriate.

**H. Consent to Assignments.** Provider shall attach to each pre-approved assignment a copy of Provider's notice to City of the pre-approved assignment and other required documents, Provider shall attach to each other assignment, a copy of City's notice to Provider of City's consent to the assignment. These Standard Terms shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

**I. Assignment Fee.** Provider shall pay to City in advance the sum of Five Hundred Dollars (\$500) as a non-refundable fee for legal, administrative and other expenses related to every pre-approved assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not City grants such request.

**16. Miscellaneous.** The following additional provisions apply to these Standard Terms:

**A. Amendments.** These Standard Terms may not be amended except by a formal writing executed by all of the parties.

**B. Dates.** Any reference to a year shall refer to a calendar year unless a fiscal year is specifically stated. Sunday, Saturday and Arizona legal holidays are holidays for purposes of this Agreement.

**C. Time of Essence.** Time is of the essence of each and every provision of this Agreement.

**D. Severability.** If any provision of these Standard Terms shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

i. The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of these Standard Terms.

ii. These Standard Terms shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

E. Conflicts of Interest. No officer, representative or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to any Site License that is prohibited by law.

F. No Partnership. The transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

G. Non-liability of Officials and Employees. No official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

H. Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid to the addresses set forth in the Site License Agreements and to the City as follows:

If to City:                      City Engineer  
   City of Apache Junction  
   575 East Baseline Avenue  
   Apache Junction, AZ 85119

With a copy to:              City Attorney  
   City of Apache Junction  
   300 E. Superstition Blvd.  
   Apache Junction, AZ 85119

By notice from time to time, a person may designate any other street address within Pinal County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Friday, Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

I. Construction. Whenever the context of these Standard Terms requires herein the singular shall include the plural, and the masculine shall include the feminine.

J. Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If

funds necessary to fulfill City's obligations under this Agreement are not appropriated by the Apache Junction City Council, City may terminate this Agreement, by notice to Provider. City shall use best efforts to give notice of such a termination to Provider at least thirty (30) calendar days prior to the end of City's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of this Agreement by City. No person will be entitled to any compensation, damages or other remedy from City if this Agreement is terminated pursuant to the terms of this subsection.

**K. Paragraph Headings.** The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

**L. No Third Party Beneficiaries.** No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Provider's construction of improvements, Provider's negligence, Provider's failure to comply with the provisions of these Standard Terms (including any absence or inadequacy of insurance required to be carried by Provider).

**M. Exhibits.** All Exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

**N. Attorneys' Fees.** If any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

**O. Approvals and Inspections.** All approvals, reviews and inspections by City are for City's sole benefit and not for the benefit of Provider, its contractors, engineers or other consultants or agents, or any other person.

**P. Legal Workers.** If and to the extent A.R.S. § 41-4401 is applicable Provider shall comply with laws regarding workers as follows:

i. Provider warrants to City that Provider and all its subcontractors will comply with all federal immigration laws and regulations that relate to their employees and that Provider and all its subcontractors now comply with the E-Verify Program under A.R.S. § 23-214(A).

ii. A breach of the foregoing warranty by Provider shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement.

iii. City retains the legal right to inspect the papers of any employee of Provider or any subcontractor who works on a Use Area pursuant to Agreement to ensure that they or the subcontractor is complying with the warranty given above.

iv. City may conduct random verification of Provider's and its subcontractors' employment records to ensure compliance with the warranty given above.

v. Provider shall indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

## EXHIBIT A-1

### ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION AND \_\_\_\_\_ FOR CITY OWNED POLE

THIS ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of, 20\_\_\_, (the "Execution Date") by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and [COMPANY NAME, INC.], an Arizona [corporation/limited liability company], ("Provider"), sometimes collectively referred to as the "Parties" or individually as a "Party".

#### RECITALS

A. The City of Apache Junction "Wireless Facilities Standard Terms and Conditions" sets out various recitals (collectively the "recitals") and provisions (collectively the "terms").

B. City holds an interest in a parcel of land (the "parcel") comprising street rights-of-way ("ROW") for \_\_\_\_\_. The parcel is located approximately \_\_\_\_\_ feet of the center of the intersection of \_\_\_\_\_ and \_\_\_\_\_.

C. This Agreement allows Provider to use certain limited portions of the parcel.

D. The portions of the parcel that this Agreement allows Provider to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached hereto as Exhibit A.

E. Provider desires to install and operate on the Use Areas the wireless telecommunications receiving, processing and transmitting devices and related electronic equipment that is specified on the Site Plan (the "communications equipment") subject to the requirements of this Agreement. The communications equipment is limited to the actual electronic equipment, portable cabinets for such equipment, the enclosure, the antennas ("antennas") used to communicate with cell phones and similar devices, all as shown on the drawing (the "Site Plan") attached hereto as Exhibit B. Notwithstanding anything in this Agreement to the contrary, the communications equipment excludes any item not shown on the Site Plan.

F. The volume of the enclosure and the above ground portion of its pad as shown in the Site Plan is \_\_\_ cubic feet.

G. The parcel is currently improved with an approximately \_\_\_\_ foot tall [electrical/traffic signal/street light/antenna support] pole (the “Pole”) owned by City.

H. Provider proposes to [use the existing Pole/replace the existing Pole] with a new Pole that City will own.

I. In order to install the communications equipment, Provider desires to construct supporting improvements and perform all other work shown on the Site Plan (collectively the “Project”).

J. Provider shall complete the entire Project and put the communications equipment in full operation no later than one hundred eighty (180) calendar days after the date of the issuance of the encroachment permit (the “completion deadline”), or otherwise abandons its application request.

K. City desires to grant to Provider a license to install, maintain, operate and repair the communications equipment (the “Permitted Uses”) subject to the requirements of this Agreement.

L. The recitals are all incorporated herein by reference as if set out in full.

### TERMS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. License Terms. City hereby grants to Provider a license to use the Use Areas as follows:

A. Terms Incorporated. The terms are all incorporated herein by reference as if set out in full. Provider warrants and represents that provider has read and agrees to the recitals and the terms. Capitalized terms used but not defined in this Agreement shall have the meanings assigned by the recitals and the terms.

B. Terms Application. Provider shall comply with all of the terms. Without limitation, the terms shall apply to the Use Areas as follows:

i. Provider’s Boundary Plan Responsibility. It is Provider’s responsibility before signing this Agreement to ensure that the Boundary Plan is prepared as follows:

a. Provider shall insure that the Boundary Plan clearly depicts all portions of the parcel that Provider desires to



use and that each such area is clearly shown on the Boundary Plan and labeled to clearly indicate which of the categories of exclusive areas or shared areas set out in the standard terms applies to the area.

b. If the Boundary Plan does not clearly show any portion of the parcel as one of the categories of exclusive areas or shared areas set out in the terms, then such portion of the parcel is not part of the Use Areas and Provider may not use such portion of the parcel, even if the use is discussed in the terms.

c. Any exclusive area or shared area described or named in the terms that is not clearly depicted and correctly labeled on the Boundary Plan is excluded from this Agreement and unavailable for Provider's use.

d. Any portion of the Boundary Plan or the Site Plan that indicates a Provider use of the parcel that is not one of the exclusive areas or shared areas specifically enumerated in the terms is excluded from this Agreement and not available for Provider's use.

e. All work, improvements and equipment within an exclusive area or shared area is limited to the purposes enumerated in the terms for that particular exclusive area or shared area.

f. This Agreement does not allow use of any land other than the specified portions of the parcel that are exclusive areas or shared areas.

g. Any change to the Boundary Plan after City executes this Agreement is void unless it is memorialized in a formal amendment to this Agreement.

ii. Site Plan. It is Provider's responsibility before signing this Agreement to ensure that the Site Plan correctly shows the work that Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that Provider intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the exclusive areas and shared areas properly depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the terms for that particular exclusive area or shared area. Any work, improvements or equipment not conforming to all the

foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the terms. Any refinement or other change to the Site Plan after City executes this Agreement is void unless Provider obtains Provider's approval of the change pursuant to the plans approval processes set out in the terms and pursuant to all applicable regulatory requirements.

iii. Term of Agreement. The term of this Agreement is as stated in Section 1 License Terms.

iv. Provider's Payments. Provider shall pay City the amounts described in the terms.

v. Use Restrictions. Provider shall comply with the use restrictions set out in the terms.

vi. Encroachment Permits. This Agreement constitutes an "Encroachment Permit" under Chapter 13, Volume I of the Apache Junction City Code to the extent of granting permission for the communications equipment to exist on the parcel but not to allow any construction or other work of any description in the ROW or to allow obstruction of traffic or alteration of City's improvements. Before performing any work on the ROW, Provider shall obtain the following additional encroachment permits, as applicable:

- Permission to work in the ROW.
- Traffic Control Plan.
- Any other applicable permits regarding work in the ROW.

vii. Compliance with Law. Provider acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Apache Junction or any other governmental body upon or affecting Provider's use of the parcel. For example, Provider shall comply with all building and ROW codes, ordinances and policies.

2. City's Initial Information. Unless and until City gives notice otherwise, City's contract administrator shall be the City Engineer.

3. Provider's Initial Information. Unless and until Provider gives notice otherwise Provider's network operations center phone number is (\_\_\_\_)\_\_\_\_\_. Provider's address for notices shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP]. Provider's billing address for routine billing invoices

shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP].

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

PROVIDER:  
[COMPANY NAME, INC.], an Arizona  
[corporation/limited liability company]

---

By: [Name]  
Its: [Title]

CITY:  
CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

---

By: \_\_\_\_\_  
Its: City Engineer

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of [Company Name], an Arizona [corporation/limited liability company].

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as City Engineer of the City of Apache Junction, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**BOUNDARY PLAN**

## **EXHIBIT B**

### **SITE PLAN**

## EXHIBIT A-2

### ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION AND \_\_\_\_\_ FOR WIRELESS PROVIDER OWNED NEW POLE

THIS ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of, 20\_\_\_, (the "Execution Date") by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and [COMPANY NAME, INC.], an Arizona [corporation/limited liability company], ("Provider"), sometimes collectively referred to as the "Parties" or individually as a "Party".

#### RECITALS

A. The City of Apache Junction "Wireless Facilities Standard Terms and Conditions" sets out various recitals (collectively the "recitals") and provisions (collectively the "terms").

B. City holds an interest in a parcel of land (the "parcel") comprising street rights-of-way ("ROW") for \_\_\_\_\_. The parcel is located approximately \_\_\_\_\_ feet of the center of the intersection of \_\_\_\_\_ and \_\_\_\_\_.

C. This Agreement allows Provider to use certain limited portions of the parcel.

D. The portions of the parcel that this Agreement allows Provider to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached hereto as Exhibit A.

E. Provider desires to install and operate on the Use Areas the wireless telecommunications receiving, processing and transmitting devices and related electronic equipment that is specified on the Site Plan (the "communications equipment") subject to the requirements of this Agreement. The communications equipment is limited to the actual electronic equipment, portable cabinets for such equipment, the enclosure, the antennas ("antennas") used to communicate with cell phones and similar devices, all as shown on the drawing (the "Site Plan") attached hereto as Exhibit B. Notwithstanding anything in this Agreement to the contrary, the communications equipment excludes any item not shown on the Site Plan.

F. The volume of the enclosure and the above ground portion of its pad as shown in the Site Plan is \_\_\_ cubic feet.

G. Provider proposes to install an approximately \_\_\_\_ foot tall wireless support structure (the “Pole”) owned by Provider (the “Owner”).

H. In order to install the communication equipment, Provider desires to construct supporting improvements and perform all other work shown on the Site Plan (collectively the “Project”).

I. Provider shall complete the entire Project and put the communications equipment in full operation no later than one hundred eighty (180) calendar days after the date of the issuance of the encroachment permit (the “completion deadline”), or otherwise abandons its application request.

J. City desires to grant to Provider a license to install, maintain, operate and repair the communications equipment (the “Permitted Uses”) subject to the requirements of this Agreement.

K. The recitals are all incorporated herein by reference as if set out in full.

### TERMS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. License Terms. City hereby grants to Provider a license to use the Use Areas as follows:

A. Terms Incorporated. The terms are all incorporated herein by reference as if set out in full. Provider warrants and represents that provider has read and agrees to the recitals and the terms. Capitalized terms used but not defined in this Agreement shall have the meanings assigned by the recitals and the terms.

B. Terms Application. Provider shall comply with all of the terms. Without limitation, the terms shall apply to the Use Areas as follows:

i. Provider’s Boundary Plan Responsibility. It is Provider’s responsibility before signing this Agreement to ensure that the Boundary Plan is prepared as follows:

a. Provider shall insure that the Boundary Plan clearly depicts all portions of the parcel that Provider desires to use and that each such area is clearly shown on the Boundary Plan and labeled to clearly indicate which of the categories of exclusive areas or shared areas set out in



the standard terms applies to the area.

b. If the Boundary Plan does not clearly show any portion of the parcel as one of the categories of exclusive areas or shared areas set out in the terms, then such portion of the parcel is not part of the Use Areas and Provider may not use such portion of the parcel, even if the use is discussed in the terms.

c. Any exclusive area or shared area described or named in the terms that is not clearly depicted and correctly labeled on the Boundary Plan is excluded from this Agreement and unavailable for Provider's use.

d. Any portion of the Boundary Plan or the Site Plan that indicates a Provider use of the parcel that is not one of the exclusive areas or shared areas specifically enumerated in the terms is excluded from this Agreement and not available for Provider's use.

e. All work, improvements and equipment within an exclusive area or shared area is limited to the purposes enumerated in the terms for that particular exclusive area or shared area.

f. This Agreement does not allow use of any land other than the specified portions of the parcel that are exclusive areas or shared areas.

g. Any change to the Boundary Plan after City executes this Agreement is void unless it is memorialized in a formal amendment to this Agreement.

ii. Site Plan. It is Provider's responsibility before signing this Agreement to ensure that the Site Plan correctly shows the work that Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that Provider intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the exclusive areas and shared areas properly depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the terms for that particular exclusive area or shared area. Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the terms. Any refinement or other change to the Site Plan after City executes this Agreement is void unless Provider obtains

Provider's approval of the change pursuant to the plans approval processes set out in the terms and pursuant to all applicable regulatory requirements.

iii. Term of Agreement. The term of this Agreement is as stated in Section 1 License Terms.

iv. Provider's Payments. Provider shall pay City the amounts described in the terms.

v. Use Restrictions. Provider shall comply with the use restrictions set out in the terms.

vi. Encroachment Permits. This Agreement constitutes an "Encroachment Permit" under Chapter 13, Volume I of the Apache Junction City Code to the extent of granting permission for the communications equipment to exist on the parcel but not to allow any construction or other work of any description in the ROW or to allow obstruction of traffic or alteration of City's improvements. Before performing any work on the ROW, Provider shall obtain the following additional encroachment permits, as applicable:

- Permission to work in the ROW.
- Traffic Control Plan.
- Any other applicable permits regarding work in the ROW.

vii. Compliance with Law. Provider acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Apache Junction or any other governmental body upon or affecting Provider's use of the parcel. For example, Provider shall comply with all building and ROW codes, ordinances and policies.

2. City's Initial Information. Unless and until City gives notice otherwise, City's contract administrator shall be the City Engineer.

3. Provider's Initial Information. Unless and until Provider gives notice otherwise Provider's network operations center phone number is (\_\_\_\_)\_\_\_\_\_. Provider's address for notices shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP]. Provider's billing address for routine billing invoices shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP].

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date

first set forth above.

**PROVIDER:**  
[COMPANY NAME, INC.], an Arizona  
[corporation/limited liability company]

---

**By:** [Name]  
**Its:** [Title]

**CITY:**  
CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

---

**By:** \_\_\_\_\_  
**Its:** City Engineer

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of [Company Name], an Arizona [corporation/limited liability company].

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as City Engineer of the City of Apache Junction, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**BOUNDARY PLAN**

**EXHIBIT B**

**SITE PLAN**

## EXHIBIT A-3

### ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION AND \_\_\_\_\_ FOR THIRD PARTY OWNED POLE

THIS ANTENNA SITE RIGHT-OF-WAY LICENSE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of, 20\_\_\_, (the "Execution Date") by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and [COMPANY NAME, INC.], an Arizona [corporation/limited liability company], ("Provider"), sometimes collectively referred to as the "Parties" or individually as a "Party".

#### RECITALS

A. The City of Apache Junction "Wireless Facilities Standard Terms and Conditions" sets out various recitals (collectively the "recitals") and provisions (collectively the "terms").

B. City holds an interest in a parcel of land (the "parcel") comprising street rights-of-way ("ROW") for \_\_\_\_\_. The parcel is located approximately \_\_\_\_\_ feet of the center of the intersection of \_\_\_\_\_ and \_\_\_\_\_.

C. This Agreement allows Provider to use certain limited portions of the parcel.

D. The portions of the parcel that this Agreement allows Provider to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached hereto as Exhibit A.

E. Provider desires to install and operate on the Use Areas the wireless telecommunications receiving, processing and transmitting devices and related electronic equipment that is specified on the Site Plan (the "communications equipment") subject to the requirements of this Agreement. The communications equipment is limited to the actual electronic equipment, portable cabinets for such equipment, the enclosure, the antennas ("antennas") used to communicate with cell phones and similar devices, all as shown on the drawing (the "Site Plan") attached hereto as Exhibit B. Notwithstanding anything in this Agreement to the contrary, the communications equipment excludes any item not shown on the Site Plan.

F. The volume of the enclosure and the above ground portion of its pad as shown in the Site Plan is \_\_\_ cubic feet.

G. The parcel is currently improved with an approximately \_\_\_\_ foot tall [electrical/traffic signal/street light/antenna support] pole (the “Pole”) owned by [ City/Utility].

H. Provider has entered into a certain \_\_\_\_\_ (the “Pole Antenna Agreement”) with Pole Owner dated \_\_\_\_\_ whereby Provider has obtained permission from Pole Owner to use the existing Pole in the manner described in this Agreement or Provider proposes to replace the existing Pole with a new Pole that Pole Owner will own.

I. In order to install the communications equipment, Provider desires to construct supporting improvements and perform all other work shown on the Site Plan (collectively the “Project”).

J. Provider shall complete the entire Project and put the communications equipment in full operation no later than one hundred eighty (180) calendar days after the date of the issuance of the encroachment permit (the “completion deadline”), or otherwise abandons its application request.

K. City desires to grant to Provider a license to install, maintain, operate and repair the communications equipment (the “Permitted Uses”) subject to the requirements of this Agreement.

L. The recitals are all incorporated herein by reference as if set out in full.

### TERMS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. License Terms. City hereby grants to Provider a license to use the Use Areas as follows:

A. Terms Incorporated. The terms are all incorporated herein by reference as if set out in full. Provider warrants and represents that provider has read and agrees to the recitals and the terms. Capitalized terms used but not defined in this Agreement shall have the meanings assigned by the recitals and the terms.

B. Terms Application. Provider shall comply with all of the terms. Without limitation, the terms shall apply to the Use Areas as follows:

i. Provider’s Boundary Plan Responsibility. It is Provider’s responsibility before signing this Agreement to ensure that



the Boundary Plan is prepared as follows:

a. Provider shall insure that the Boundary Plan clearly depicts all portions of the parcel that Provider desires to use and that each such area is clearly shown on the Boundary Plan and labeled to clearly indicate which of the categories of exclusive areas or shared areas set out in the standard terms applies to the area.

b. If the Boundary Plan does not clearly show any portion of the parcel as one of the categories of exclusive areas or shared areas set out in the terms, then such portion of the parcel is not part of the Use Areas and Provider may not use such portion of the parcel, even if the use is discussed in the terms.

c. Any exclusive area or shared area described or named in the terms that is not clearly depicted and correctly labeled on the Boundary Plan is excluded from this Agreement and unavailable for Provider's use.

d. Any portion of the Boundary Plan or the Site Plan that indicates a Provider use of the parcel that is not one of the exclusive areas or shared areas specifically enumerated in the terms is excluded from this Agreement and not available for Provider's use.

e. All work, improvements and equipment within an exclusive area or shared area is limited to the purposes enumerated in the terms for that particular exclusive area or shared area.

f. This Agreement does not allow use of any land other than the specified portions of the parcel that are exclusive areas or shared areas.

g. Any change to the Boundary Plan after City executes this Agreement is void unless it is memorialized in a formal amendment to this Agreement.

ii. Site Plan. It is Provider's responsibility before signing this Agreement to ensure that the Site Plan correctly shows the work that Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that Provider intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the exclusive areas and shared areas properly

depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the terms for that particular exclusive area or shared area. Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the terms. Any refinement or other change to the Site Plan after City executes this Agreement is void unless Provider obtains Provider's approval of the change pursuant to the plans approval processes set out in the terms and pursuant to all applicable regulatory requirements.

iii. Term of Agreement. The term of this Agreement is as stated in Section 1 License Terms.

iv. Provider's Payments. Provider shall pay City the amounts described in the terms.

v. Use Restrictions. Provider shall comply with the use restrictions set out in the terms.

vi. Encroachment Permits. This Agreement constitutes an "Encroachment Permit" under Chapter 13, Volume I of the Apache Junction City Code to the extent of granting permission for the communications equipment to exist on the parcel but not to allow any construction or other work of any description in the ROW or to allow obstruction of traffic or alteration of City's improvements. Before performing any work on the ROW, Provider shall obtain the following additional encroachment permits, as applicable:

- Permission to work in the ROW.
- Traffic Control Plan.
- Any other applicable permits regarding work in the ROW.

vii. Compliance with Law. Provider acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Apache Junction or any other governmental body upon or affecting Provider's use of the parcel. For example, Provider shall comply with all building and ROW codes, ordinances and policies.

2. City's Initial Information. Unless and until City gives notice otherwise, City's contract administrator shall be the City Engineer.

3. Provider's Initial Information. Unless and until Provider gives notice otherwise Provider's network operations center phone number is (\_\_\_\_)\_\_\_\_\_. Provider's address for notices shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP]. Provider's billing address for routine billing invoices shall be: [NAME, STREET ADDRESS, CITY, STATE, ZIP].

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

PROVIDER:  
[COMPANY NAME, INC.], an Arizona  
[corporation/limited liability company]

---

By: [Name]  
Its: [Title]

CITY:  
CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

---

By: \_\_\_\_\_  
Its: City Engineer

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of [Company Name], an Arizona [corporation/limited liability company].

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as City Engineer of the City of Apache Junction, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**BOUNDARY PLAN**

## **EXHIBIT B**

### **SITE PLAN**

## **EXHIBIT B**

### **STANDARDS FOR LETTERS OF CREDIT**

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to these Standard Terms, each Letter of Credit shall meet and be governed by the following additional standards and requirements:

**A. Letter of Credit Requirements.** The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:

- i. The Letter of Credit is clean, unconditional, and irrevocable.
- ii. The Letter of Credit is payable to City upon presentation of the City's draft.
- iii. City may make partial draws upon the Letter of Credit.
- iv. The Letter of Credit is conditioned for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.
- v. Within ten (10) calendar days after City's draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer.
- vi. The issuer specifies a telefax number, email address, and street address at which City may present drafts on the Letter of Credit.
- vii. The Letter of Credit is valid until a specified date.
- viii. The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) calendar days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for the additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.
- ix. The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits, published by the International Chamber of Commerce.
- x. The Letter of Credit need not be transferable.

**B. Approved Forms.** The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

- i. Except as approved in writing by City's Engineer or designee, the form of the Letter of Credit shall be in the form set out below.
- ii. Except as approved in writing by City's Engineer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

**C. Issuer Requirements.** The issuer of the Letter of Credit shall meet all of the following requirements:

- i. The issuer shall be a federally insured financial institution with offices in one of its branches within the City of Apache Junction city limits, at which drafts upon the Letter of Credit may be presented.

ii. The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust company satisfactory to City.

iii. The issuer shall have a net worth of not less than \$1 billion.



## LETTER OF CREDIT

Date \_\_\_\_\_

Letter of Credit No. \_\_\_\_\_

City of Apache Junction  
300 E. Superstition Blvd.  
Apache Junction, AZ 85119

Dear Sir or Madam:

We hereby establish our clean, unconditional and irrevocable Letter of Credit in your favor at the request and for the account of \_\_\_\_\_ in the aggregate amount of \_\_\_\_\_ (\$ \_\_\_\_\_), available upon presentation of your draft in the form attached hereto as Schedule 1.

We will honor each draft presented to us in compliance with the terms of this Letter of Credit. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit. Within ten calendar (10) days after we honor your draft, you must make the original of this Letter of Credit available to us upon which we may endorse our payment. Drafts may be presented by any of the following means:

1. By telefax to (\_\_\_\_\_) \_\_\_\_\_
2. By email to \_\_\_\_\_
3. By hand or overnight courier service delivery to: [This address must be in Pinal County, Arizona.] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. By hand or overnight courier service delivery to: [This address need not be in Pinal County, Arizona] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Letter of Credit is valid until \_\_\_\_\_, 20 \_\_\_\_ and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty calendar (120) days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the UCP600. This Letter of Credit is not assignable.

\_\_\_\_\_  
Bank Name

\_\_\_\_\_  
Bank Officer's Signature

\_\_\_\_\_  
Bank Officer's Name (printed)

\_\_\_\_\_  
Bank Officer's Title

\_\_\_\_\_  
Bank Telephone Number

**LETTER OF CREDIT ENCROACHMENT DEMAND**

To: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_

300 East Superstition Blvd.  
Apache Junction, AZ 85119

Date: \_\_\_\_\_

Ladies and Gentlemen:

Pursuant to your Credit No. \_\_\_\_\_, the City of Apache Junction hereby  
demands cash payment in the amount of \_\_\_\_\_  
(\$ \_\_\_\_\_) .

Please make your payment to the City of Apache Junction in the form of a wire  
deposit to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If such deposit cannot be accomplished immediately for any reason, please make  
your payment in the form of a cashier's check issued by your institution and  
delivered to me at the address listed above.

I certify that I am the \_\_\_\_\_ for the City of Apache Junction.

If there is any imperfection or defect in this draft or its presentation, please inform  
me immediately at (480) \_\_\_\_\_ so that I can correct it. Also, please notify  
the City Attorney at (480) 474-5105.

Thank you,

\_\_\_\_\_  
\_\_\_\_\_

City of Apache Junction

## ASSUMPTION OF ANTENNA SITE RIGHTS-OF-WAY LICENSE AGREEMENT

This assumption is made pursuant to paragraph 16 (E) of that certain Antenna Site Rights-of-Way License Agreement (“Agreement”) between City of Apache Junction, an Arizona municipal corporation (“City”) and \_\_\_\_\_, (“Provider”) dated \_\_\_\_\_.

**Dated:** \_\_\_\_\_

**a** \_\_\_\_\_  
**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

The foregoing was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of [Company Name], an Arizona [corporation/limited liability company].

**My Commission Expires:**