



## **STANDARD TERMS AND CONDITIONS FOR THE PLACEMENT OF WIRELESS FACILITIES IN THE RIGHT-OF-WAY**

### Policy and Guiding Principles

As a supporter of smart city technologies and to encourage increased economic development, the City welcomes all new technology and supports the development and deployment of wireless telecommunication and broadband infrastructure.

The City endorses streamlining processes to remove any unnecessary regulatory barriers that would hinder such deployment and potentially discourage competitors that would offer residents a choice among internet and telecom providers.

The City seeks to maintain and encourages and supports an aesthetically pleasing community for its residents and businesses throughout all areas of Tempe. To that end, the City has created objective design standards and stealth and concealment requirements to ensure that wireless facilities will blend into their environment so as to minimize any visual blight caused by the encroachments in the right-of-way and to help protect the character and sight views of the City's landscape.

The City recognizes that time to deployment is important for the wireless industry and its customers. The option to submit a preliminary site plan without having to pay a fee will assist the wireless provider in determining the feasibility of a proposed wireless site and in ascertaining whether a replacement pole will be needed. A proposed right-of-way use site agreement (RUSA) will be given to the wireless provider upon approval of the preliminary site plan and the wireless provider then will have the choice to accept the City's Standard Terms and Conditions or request different or additional terms, which can then be incorporated into the RUSA or attached as a rider once negotiated and agreed upon. If there are no changes requested to the Standard Terms and Conditions, the wireless provider can simply complete, sign, and submit the RUSA along with the application. Upon approval of an application, the City will countersign the RUSA and issue the Utility Permit, which will allow the wireless provider to proceed with deployment of the SWF.

Effective management of the right-of-way requires that the City balance the needs of the wireless industry to deploy its technology as rapidly as possible with the responsibility the City has to its residents and businesses to ensure that such encroaching installations comply with all health and safety regulations and will not block a motorist's or pedestrian's line of sight. To that end, the City encourages the use of existing verticality when collocating wireless facilities. New verticality will be allowed when and where appropriate through a wavier process of the undergrounding requirement.

## DEFINITIONS

**ACC** means the Arizona Corporation Commission.

**Affiliate** means any person or entity controlling, controlled by, or under the common control with the Wireless Provider.

**Antenna** as defined in A.R.S. § 9-591(1) means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.

**Applicable Codes** means uniform building, fire, electrical, plumbing or mechanical codes that are adopted by a recognized national code organization or local amendments to those codes that are enacted to address threats of destruction of property or injury to persons.

**Claim(s)** means and includes allegations, assessments, taxes, impositions, proceedings, liabilities, obligations, losses, claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment, penalties, fines, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees incurred through all appeals.

**Collocate or Collocation** as defined in A.R.S. § 9-591(8) means to install, mount, maintain, modify, operate or replace wireless facilities on, within or adjacent to a Wireless Support Structure or Utility Pole.

**Communications Equipment** means the City's antennas, radios, transmitters, repeaters, control boxes, and other equipment associated with the operation of its wireless facilities.

**Communications Service** as defined in A.R.S. § 9-591(9) means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53) or wireless service.

**Conduit** means a pipe of either metal, ceramic or plastic that is designed to protect buried cables.

**Conduit System** means enclosed underground raceways capable of protecting fiber optic and other communications cables, including associated individual ducts, innerducts, manholes, handholes, vaults, pull-boxes and trenches.

**Contractor** means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that performs services or provides goods for Wireless Provider relating to this Standard Terms and Conditions.

**CFR** means the Code of Federal Regulations.

**Dark Fiber** means fiber optic strands that are not connected to transmission equipment.

**Duct** means a single enclosed tube, pipe or channel for enclosing and carrying cables, wires, and other facilities.

**Emergency** means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Tempe or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

**Enclosure** means the enclosure housing for the electronic ground equipment shown on the Site Plan.

**FCC** means the Federal Communications Commission.

**FCC OET Bulletin 65** means the FCC's Office of Engineering and Technology Bulletin 65 that includes the FCC Radio Frequency Exposure Guidelines.

**Hazardous Substance** means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

**Innerduct** mean a rigid or flexible metal or nonmetallic raceway through which cables or fiber can be pulled within a duct or conduit for identification and protective purposes.

**Monopole** as defined in A.R.S. § 9-591(13) means a wireless support structure that is not more than forty (40) inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole.

**OSHA** means the Occupational and Safety Health Administration.

**Private Easement** means an easement or other real property right that is only for the benefit of the grantor and grantee and the grantor's or grantee's successors and assigns.

**Public Service Corporation** means a corporation engaged in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or engaged in collecting, transporting, treating, purifying and disposing of sewage through a system, for profit; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers. However, a message transmitting company is only a public service corporation if it is a common carrier.

**Right-of-Way ("ROW")** as defined for wireless sites in A.R.S. § 9-591(18) means the area on, below or above a public roadway, highway, street, sidewalk, alley, or utility easement. Right-of-way 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 wireless provider

**Right-of-Way Use Site Agreement ("RUSA")** means the permission granted to Wireless Provider upon approval of an application to install Small Wireless Facilities either on existing or new Utility Poles or Wireless Support Structures in the ROW.

**Small Wireless Facility ("SWF")** as defined in A.R.S. § 9-591(19), means 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 August 9, 2017. 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.

**Special Taxing District** as defined in A.R.S. § 9-591(20) means a special district formed pursuant to Title 48, chapters 11,12,17,18,19, 20 or 22.

**Telecommunications** as defined in A.R.S. § 9-581(4) means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. However, the term does not include commercial mobile radio services, pay phone services, interstate services, cable services, information services, or the sale and/or leasing of dark fiber for transmission purposes.

**Telecommunications Corporation** means any Public Service Corporation to the extent that it provides telecommunications services in this state.

**Telecommunications Services** as defined in A.R.S. § 9-581(6) means the offering of telecommunications for a fee directly to the public, or to such users as to be effectively available directly to the public, regardless of the facilities used.

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

**Utility Permit** means the permit issued for work within the right-of-way. This permit allows the utility company or a contractor hired by a utility company to conduct work within the right-of-way and is required prior to submitting the Traffic Control Plan.

**Utility Pole or Pole** for purposes of these Standards Terms only as defined in A.R.S. § 9-591(21) means a pole or similar structure that is used in whole or in part for communications services, electric distribution, lighting or traffic signals. Utility pole does not include a Monopole.

**Use Area** means the portions of the right-of-way or easements designated on a Site Plan (as defined in the applicable RUSA) that Wireless Provider can use and/or occupy with the SWF or Monopole as authorized by an executed RUSA (as defined below).

**Wireless Facility** as defined in A.R.S. §9-591(22) means:

- A. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:
  - 1. Equipment associated with wireless communications.
  - 2. 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 A.R.S. § 9-506(I), or microcell equipment described in A.R.S. § 9-584(E).

**Wireless Infrastructure Provider** as defined in A.R.S. § 9-591(23) means any person that is authorized to provide telecommunications service in Arizona 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.

**Wireless Provider** as defined in A.R.S. § 9-591(24) means a cable operator, Wireless Infrastructure Provider or Wireless Services Provider.

**Wireless Services** as defined in A.R.S. § 9-591(25) means 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** as defined in A.R.S. § 9-591(26) means a person that provides wireless services. Wireless Services Provider does not include a Special Taxing District.

**Wireless Support Structure** as defined in A.R.S. §9-591(27) means:

- 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.

Wireless Support Structure does not include a Utility Pole.

## STANDARD TERMS FOR RIGHT-OF-WAY USE

### SECTION 1. Permission Granted

1.1 Wireless Provider shall not install any Wireless Facility unless it first obtains the necessary City approval of an application to either install a small Wireless Facility (SWF) or to install a new, replacement or modified Utility Pole associated with an SWF, or to erect a Monopole (Application), has a signed Right-of-Way Use Site Agreement (RUSA) and any generally applicable permits for work in the right-of-way (ROW) as required by local laws and/or any other applicable state and federal laws and regulations. Upon approval of an Application, a RUSA will be executed by a countersignature of the City Engineer to indicate the Wireless Provider's agreement to these Standard Terms and Conditions (Standard T's and C's) and to set forth the specific requirements for each SWF or Monopole site. A Wireless Provider may request different or additional terms that will be negotiated in good faith between the City and the Wireless Provider. If different or additional terms are agreed to, the RUSA will be amended for that Wireless Provider to indicate such. Unless otherwise indicated therein, these Standard T's and C's will be part of all the RUSAs for that Wireless Provider's Wireless Facilities in the ROW. Placement of any unauthorized facilities on City-owned poles or structures or in the ROW without a RUSA shall constitute trespass.

1.2 Unless otherwise stated therein, the RUSA is issued for only one SWF to be used by a single Wireless Provider. No additional SWFs can be placed in the area of the ROW covered by the RUSA without getting express permission from the City through a separate Application.

1.3 Verification of Ownership. City does not warrant its own or any other person's title to or rights to use the ROW or any other property. A Wireless Provider's right to place its Wireless Facilities in or on a utility easement in a particular area of the City will depend upon whether the utility easement authorizes the deployment sought by the Wireless Provider. It is the responsibility of the Wireless Provider to determine if the Use Area is within City ROW or a utility easement through the appropriate documentation such as a deed or dedication of ROW to the City or Public Utility Easement dedication for the site as part of its Application. If deemed necessary, the City may require a title report during preliminary site plan review. If the Use Area does not fall under the jurisdiction of the City, it is up to the Wireless Provider to secure the land rights to site its Wireless Facilities in the Use Area. A Wireless Provider's rights in the Use Areas are limited to the specific rights created by the City's Standard T's and C's and the RUSA.

1.4 An SWF installed by the Wireless Infrastructure Provider pursuant to an RUSA may be owned and/or operated by Wireless Infrastructure Provider's third-party wireless carrier customers ("Carriers") and installed and maintained by the Wireless Infrastructure Provider pursuant to license agreements between the Wireless Infrastructure Provider and such Carriers. The SWF shall be treated as the Wireless Infrastructure Provider's SWF for all purposes under the RUSA provided that: A) the Wireless Infrastructure Provider remains responsible and liable for all performance obligations under the RUSA with respect to such SWF; B) the City's sole point of contact regarding such SWF shall be the Wireless Infrastructure Provider; and C) the Wireless Infrastructure Provider shall have the right to remove and relocate the SWF subject to these Standard T's and C's.

1.5 The location, spacing, size, and appearance of any related pole-mounted or ground-based equipment (microwave dishes, radios, relays, power supplies, meters, etc.), enclosures, cabinets, and pedestals placed in the ROW must be approved by the City as per the City's Design Standards and Stealth and Concealment Requirements. Any new vertical structures sought to be placed in the ROW will be subject to City regulations and Chapter 29 of the Tempe City Code. Wireless Provider shall comply with

all City regulations and Code requirements setting forth design standards and stealth and concealment requirements relating to the appearance and installation of all Wireless Facilities in the ROW as determined by the City Engineer. Any future modifications of such Wireless Facilities must maintain the stealth and concealment elements required for the original Wireless Facilities.

1.6 Wireless Provider can also use approved portions of the ROW for the installation of Conduit and underground fiber lines related to Wireless Facilities upon the inclusion of a Conduit and Fiber Optic Cable Installation Information exhibit to the RUSA. A map of the conduit/fiber route will be provided to the City at the time of submission of the Application for the installation of an SWF or Monopole in a particular portion of the ROW.

## **SECTION 2. Non-Exclusive Rights/Priority Rights**

2.1 Non-Exclusive. Permission to use the ROW is not exclusive and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted to the City under the Constitution and laws of the State of Arizona.

2.2 Prior Rights. Any and all rights granted to Wireless Provider to use the ROW shall be subject to the prior and continuing right of City to use the ROW exclusively or concurrently, with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the ROW or public property. Any use of the ROW shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Standard T's and C's.

2.3 No Real Property or Leasehold Rights Conveyed. Nothing in these Standard T's and C's or a RUSA shall be construed to grant, convey, create or vest a perpetual real property interest in land to a Wireless Provider, including any fee or leasehold interest, easement, or any franchise rights in adjacent land or ROW nor any ownership or leasehold interest in the City-owned structures, replacement poles or ROW. A RUSA with a Wireless Provider does not constitute an assignment of any of City's rights to use the public property upon which the Pole(s) is/are located (other than expressly provided herein or in the RUSA).

## **SECTION 3. City's Reserved Rights**

3.1 City specifically reserves to itself and excludes from an approved RUSA a non-exclusive and delegable right over the entire Use Area for all manner of real and personal improvements related to governmental activity or other improvement designed to benefit the public, subject to the relocation requirements of Section 41.1. Wireless Provider accepts the risk that the City may now or in the future install or modify facilities in the Use Areas in locations that make the area unavailable for Wireless Provider's continued use. Such activities may include, but are not limited to any and all construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, realigning, or otherwise accommodating all manner of streets, sidewalks, alleys, trails, traffic control devices, transit facilities, pipes, wires, cables, conduit, sewer, canals, drains, overpasses, culverts, bridges, and other encroachments, and any other use of the ROW that the City may determine from time to time to be a benefit to the public.

3.2 Zoning and Similar Approval Process. Any zoning processes, building permit processes, and similar regulatory requirements that apply to Wireless Provider's Wireless Facilities on private property are separate from the approval processes for an SWF to be in the ROW.

3.3 No Waiver. By allowing a Wireless Provider to use the ROW, City is not waiving any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of their property or facilities. Additionally, a Wireless Facility or Monopole shall not be constructed or placed in Third Party Areas without the express written permission from the third party or third parties that have property rights or regulatory authority over the specific Third-Party Area.

3.4 Landlord/Proprietary Rights of City-owned Poles. City reserves the right to maintain its Poles and to operate City facilities on City Poles in such manner as will best enable it to fulfill its own service requirements, including but not limited to street light banners or the attachment of additional antennas to City Poles so long as such requirements and additional facilities do not materially interfere with Wireless Provider's operations. City shall not have any liability for any interference caused by the operation of Wireless Provider's equipment or Wireless Provider's customer's equipment with another Wireless Provider's equipment that may arise in any manner out of Wireless Provider's use of City Poles or ROW for its Wireless Facilities.

3.4.1 City reserves the right to abandon any of the City's Poles. City shall give Wireless Provider no less than one hundred eighty (180) days' notice of its intent to abandon a Pole. City may include in such notice an offer to sell the Pole to Wireless Provider at the then value thereof in place or such other equitable sum as the Parties may agree upon, in which case Wireless Provider shall have sixty (60) days from the date of such notice to purchase said Pole. If Wireless Provider has already paid for or supplied the Pole, there will be no charge for the Pole. If Wireless Provider does not purchase the Pole within the 30-day period, the City's permission to Wireless Provider to attach to such Pole shall terminate, and unless the City notifies Wireless Provider otherwise, Wireless Provider shall immediately remove Wireless Provider's SWF from the Pole. Failure to do so will result in City withdrawing actual costs from the Deposit provided by Wireless Provider under Section 15.

3.4.2 Wireless Provider shall at no time sublease, sublicense, or rent any portion of the space on the Pole subject to these Standard T's and C's nor shall Wireless Provider permit others to attach equipment of any kind to the Poles or to Wireless Provider's SWF or Monopole without submitting the appropriate Application, getting prior written approval from City, amending the RUSA and paying any appropriate fees. If Wireless Provider is in violation of this provision, then City shall have the right to immediately terminate the permission granted to Wireless Provider to attach to the Poles involved in the violation and to require the Wireless Provider to remove Wireless Provider's SWF or Monopole from the ROW.

3.4.3 The permission to use a City-owned Pole shall be subject to the privilege to use City Poles as granted by City to any third parties under prior permissions and City reserves the right to continue, modify, and extend such attachment privileges provided any such modification does not physically interfere with Wireless Provider's rights herein.

3.4.4 City reserves the right hereafter to enter into agreements permitting third parties to attach facilities to City Poles; provided, however, that such permission: A) shall be terminated by



City in the event that the facilities of such third party interferes with Wireless Provider's equipment; B) requires the third party to reimburse Wireless Provider for: i) the expense of altering Wireless Provider's SWF to accommodate the attachment of third party's facility, including the cost of relocating Wireless Provider's SWF from an existing Pole to a replacement Pole; and ii) such third parties' pro rata share of all costs incurred by Wireless Provider for the purchase and installation of the Pole. Wireless Provider will not be liable for any portion of the cost of a replacement Pole necessitated by the attachment of a third party's facility made pursuant to an agreement entered into after the date of the RUSA for that Pole.

#### **SECTION 4. Compliance with Applicable Laws and Regulations**

4.1 Use of a specific portion of the ROW ("Use Area") by a Wireless Provider is subject to these Standard T's and C's, the Tempe City Code, the City Tempe Charter, Maricopa County regulations and Arizona laws. Wireless Provider shall comply with all applicable federal laws and regulations, including but not limited to, the Equal Employment Opportunity Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Communications Act of 1934, the National Environmental Policy Act and the National Historic Preservation Act.

4.2 Subject to federal and state law, Wireless Provider and its agents shall be subject to the City's exercise of such police, regulatory, and other powers as it now has or may later obtain, and Wireless Provider may not waive the application of the same. City shall have continuing jurisdiction and supervision over any Wireless Facilities located within or on public ROW. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Wireless Provider's use of the public ROW as may be deemed best for the public interest, safety, or welfare to the same extent that such restrictions and limitations are applied to all non-governmental users of the public ROW. Daily administrative, supervisory, and enforcement responsibilities shall be delegated and entrusted to the City Manager or designee to interpret, administer, and enforce the provisions of these Standard T's and C's.

4.3 Wireless Provider is completely responsible for ensuring that its Wireless Facilities are constructed, installed, operated and/or maintained in accordance with the Tempe City Code, City of Tempe Utility Permit and Construction Manual, and established practices with respect to such public ROW and easements such as the proper permits being applied for prior to commencing any work and that the terms and conditions of such permits are strictly followed.

#### **SECTION 5. Fees and Payments**

5.1 Application Fee for the Installation of New, Replacement, or Modified Utility Poles Associated with the Collocation of Small Wireless Facilities in the ROW. Wireless Provider will pay Seven Hundred Fifty Dollars (\$750) as per Appendix A, Engineering Fees, Tempe City Code.

5.2 Application Fee to Collocate Small Wireless Facilities in the ROW. Wireless Provider will pay One Hundred Dollars (\$100) each for up to five (5) small wireless facilities addressed in the application and Fifty Dollars (\$50) for each additional small wireless facility addressed in the application as per Appendix A, Engineering Fees, Tempe City Code.

5.3 Application Fee for Modification of Existing or the Installation of New Monopoles, Utility Poles, or Wireless Facilities or the Collocation of Wireless Facilities in the ROW. Wireless Provider will pay One Thousand Dollars (\$1,000) as per Appendix A, Engineering Fees, Tempe City Code.

5.4 City-Owned Pole Use Fee. Wireless Provider will pay Fifty Dollars (\$50) per pole per year as per Appendix A, Engineering Fees, Tempe City Code.

5.5 ROW Use Fee for SWFs. Wireless Provider will pay Fifty Dollars (\$50) per year multiplied by the number of SWFs that are within the City's ROW as per Appendix A, Engineering Fees, Tempe City Code.

5.6 Overtime Charge. If, at the request of Wireless Provider, the needs of Wireless Provider's work require after hours or nighttime work outside of normal business hours, Wireless Provider shall reimburse the City according to the Section 29-19 fee schedule in place.

5.7 Damage Fee. Wireless Provider shall pay any reasonable costs associated with any damage caused to the ROW or public property under Tempe City Code Sections 29-18 and 29-19.

5.8 Payment Information. Any checks should reference the RUSA number and be sent to:

City of Tempe  
Attn: City Engineer  
31 E. 5<sup>th</sup> St., Garden Level  
Tempe, AZ 85281

5.9 Payment Terms. All fees due are non-refundable. The annual fee pursuant to a RUSA will be due thereafter upon the anniversary of the Commencement Date for each RUSA and shall be made within five (5) business days of that date. In the event of multiple RUSAs with different anniversary dates for fees, if Wireless Provider wants to consolidate billing and have one due date, it can coordinate with the City's Engineering Division of the Public Works Department to make such an adjustment.

5.10 Late Charge. If payment is not made by the next to the last business day of the month when payment is due, the City may impose interest at a rate of one percent (1%) per month commencing from the date payment should have been made and continuing until the payment is made. Fractions of a month shall be considered to constitute a full month for computing interest. If the cause of failure to pay the fee or any portion thereof is determined by the City to be due to civil fraud or the intentional evasion of the fee, Wireless Provider shall pay a penalty of fifty percent (50%) of the amount of deficiency. City's receipt of a late fee shall not result in a waiver of City's rights pursuant to these Standard T's and C's.

5.11 Taxes. To the extent taxes or other assessments are imposed by taxing authorities on the use of City property because of Wireless Provider's use or occupation of the ROW, or for the provision of wireless services, the Wireless Provider shall be responsible for the payment of such taxes, payable annually unless otherwise required by the taxing authority.

## **SECTION 6. Insurance**

6.1 Insurance Required. Prior to any access to Poles or the ROW, Wireless Provider shall procure and maintain insurance against claims for: A) bodily injury, sickness or disease, or death of any or more persons other than Wireless Provider's employees; B) damages insured by usual personal and advertising

injury liability coverage; C) damages because of injury to or destruction of tangible property, including loss of use resulting from; D) products/completed operations; and E) damages involving contractual liability insurance applicable to Wireless Provider's indemnity obligations under these Standard T's and C's. Such insurance shall cover claims as may be occasioned by the operations, act, omission, or negligence of Wireless Provider or its officers, agents, representatives, employees, or Contractors during all times that the RUSAs are in effect. Insurance limits may be met by the combination of primary and umbrella or excess coverage.

6.2 Limits of Coverage. Without limiting any obligations or liabilities, Wireless Provider, at its sole expense, shall purchase and maintain the insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance. Each insurer shall have a current A.M. Best Wireless Provider, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

6.3 Limits of Insurance. Wireless Provider shall maintain limits of:

6.3.1 Commercial General Liability. Commercial general liability insurance limit of Three Million Dollars (\$3,000,000) per occurrence, and Six Million Dollar (\$6,000,000) general aggregate limit. The policy shall be primary and include coverage for bodily injury, property damage, personal and advertising injury, products, completed operations, and blanket contractual liability, which coverage will be at least as broad as Insurance Services Office Inc. policy form CG 00 01 or its equivalent, including but not limited to severability of interests and waiver of subrogation clauses.

6.3.2 Worker's Compensation. Wireless Provider shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Wireless Provider employees engaged in the performance of services; and employer's liability insurance of not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) disease for each employee and One Million Dollars (\$1,000,000) disease policy limit.

6.3.3 Automobile Liability. Commercial business automobile liability insurance with a combined single limit for bodily injury and property damages of One Million Dollars (\$1,000,000) each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of the Wireless Provider's work.

6.4 Additional Insured. The insurance coverage, except for workers compensation, employer's liability, and special risk property insurance, required by these Standard T's and C's, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds as their interest may appear under these Standard T's and C's, and shall specify that insurance afforded the Wireless Provider shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by City or its employees shall not contribute to the coverages provided by Wireless Provider. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

6.5 Coverage Term. All insurance required herein shall be maintained in full force and effect while any RUSA is effective and until the Wireless Provider has completed all removal and restoration obligations hereunder. Failure to do so shall be a cause for termination of the applicable RUSAs.

6.6 Primary Coverage. Wireless Provider's insurance shall be primary insurance to the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

6.7 Claim Reporting. Any failure of the Wireless Provider to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City. Wireless Provider shall promptly furnish City's Risk Management Division with copies of any accident or incident report(s) sent to Wireless Provider's insurance carriers covering accidents/incident occurring in connection with and/or as a result of use of the ROW.

6.8 Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of Wireless Provider's acts, mistakes, omissions, work or services.

6.9 Certificates of Insurance. Prior to the commencement of any work pursuant to this Standard T's and C's, Wireless Provider shall furnish to the City certificates of insurance and blanket additional insured endorsements as required by these Standard T's and C's, issued by Wireless Provider's insurer(s) as evidence that policies providing the required coverages, conditions, and limits required by this Standard T's and C's are in full force and effect and obtain approval of such certificates from the City's Risk Manager, which reasonable approval may not be withheld. Notwithstanding the foregoing, no RUSAs may be executed and Wireless Provider may not perform any work until a certificate of insurance is provided to the City. Such certificates shall identify the RUSA number or name and will include the required endorsement(s) listing the City as an additional insured. If a policy does expire during the term of this Standard T's and C's, a renewal certificate(s) must be sent directly to the City's Risk Management prior to the expiration date.

6.9.1 Such certificates and all subsequent renewals that are required shall be sent directly to:

Risk Management	<u>With a copy to:</u>
City of Tempe	City of Tempe
20 E. 6th St., 2nd Floor	City Engineer
Tempe, AZ 85281	31 E. 5 <sup>th</sup> St., Garden Level
	Tempe, AZ 85281

6.10 Copies of Policies. The City shall not be obligated, however, to review same or to advise Wireless Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Wireless Provider from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Wireless Provider's obligations under these Standard T's and C's. In lieu of providing copies of actual insurance policies, Wireless Provider may elect instead to allow City to inspect copies of the insurance policies at Wireless Provider's most proximate place of business within Arizona. If City inspects the insurance policies, City shall not reveal the policy limits, coverages, or other terms of the insurance policies except to enforce these Standard T's and C's or as required by a court or other applicable legal authority.

6.11 Policy Limit Escalation. By written notice to Wireless Provider, City may elect 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 reasonable amount of insurance to be provided.

6.12 Indemnification Unaffected. Nothing containing in these insurance requirements is to be construed as limiting the extent of Wireless Provider's obligation to indemnify, defend, and hold harmless the City as set forth in the Indemnification requirements these Standard T's and C's.

6.13 Notice of Change in Coverage. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium, will be given to City. Wireless Provider shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation, or expiration of any of the policies as required by this Standard T's and C's that are not replaced.

6.14 Contractor Insurance. Wireless Provider will require any Contractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Wireless Provider, including the City being an additional insured as its interest may appear under these Standard T's and C's, excluding workers compensation and employer's liability.

## **SECTION 7. Indemnity**

7.1 In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of use of the ROW, Wireless Provider shall pay, indemnify, defend, and hold harmless City and all other additional insureds for, from, and against any and all Claims related to Wireless Provider's use of the ROW or the rights granted to Wireless Provider with respect to the ROW or Wireless Provider's exercise of its rights under these Standard T's and C's (including, without limitation, the negligence or intentional misconduct of Wireless Provider and its employees, Contractors, and agents in connection therewith) (collectively, the "Indemnity").

7.2 Without limitation, the Indemnity shall include and apply to any and all Claims that may arise in any matter out of any use by Wireless Provider or its Contractor of the ROW or other property related to these Standard T's and C's or any actions, acts, errors, mistakes, or omissions relating to work or services in the performance of or related to this Standard T's and C's by Wireless Provider or its Contractor, 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, and including without limitation, Claims, liability, harm, or damage caused by anyone for whose mistakes, errors, omissions, or negligence Wireless Provider may be liable.

7.3 As a condition to using the City's ROW, Wireless Provider specifically agrees that to the extent any of these Standard T's and C's are not fully enforceable against Wireless Provider for any reason whatsoever, this indemnification obligation shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

7.4 The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to Wireless Provider's use of ROW or public real property under these Standard T's and C's or from Wireless Provider's non-compliance with the Site Plan (as defined in the applicable RUSA).

7.4.1 Notwithstanding the foregoing, the Indemnity does not apply to Claims arising from the gross negligence or willful misconduct of City or its employees, agents or contractors or to Claims that the law prohibits from being imposed upon the indemnitor.

7.5 Subject to any legal protections for privilege and/or confidentiality, the Wireless Provider shall promptly notify the City in writing of any claims, demands, or lawsuits which may involve the City in relation to these Standard T's and C's and upon City's request, shall provide copies of all relevant accident reports, incident reports, statements, or other documents that are relevant to the claims, demands, or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, agents, contractors, and/or others.

7.6 Subject to any legal protections for privilege and/or confidentiality, both the City and the Wireless Provider agree to make their employees, agents, and Contractors available to each other to gather any relevant information relating to an incident, which results in a claim, demand, or lawsuit.

7.7 It is the purpose of this section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Wireless Provider against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages either arose only from the City's gross negligence or willful misconduct or that the City was comparatively at fault for the damages. Only in this event may Wireless Provider then commence an action against the City for damages related to that portion judicially determined to be the City's fault.

7.8 The amount and type of insurance coverage requirements set forth in these Standard T's and C's will in no way be construed as limiting the scope of the Indemnity in this section.

7.9 The obligations set forth in this section shall survive completion of the work, or termination or expiration of a RUSA.

## **SECTION 8. Limitation of Liability**

8.1 Wireless Provider expressly acknowledges that its Wireless Facilities are exposed to many risks beyond the reasonable control of City, including acts of God or the public enemy, such as but not limited to, wind, rain, sleet, ice, floods, fire, riots, sabotage, expropriation, or confiscation of facilities. Except as expressly provided in these Standard T's and C's, Wireless Provider shall assume all risk of loss or damage to Wireless Facilities that may arise from any cause, except for the cost of repairs to damaged Wireless Facilities to the extent caused by the gross negligence or willful misconduct of the City and not covered by Wireless Provider's insurance. City makes the City-owned structures and ROW available for Wireless Provider's use "AS IS," without representation or warranty of any kind.

8.2 IN NO EVENT, HOWEVER, SHALL CITY BE LIABLE TO WIRELESS PROVIDER OR ANY OF ITS RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES, OR CUSTOMERS FOR ANY LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE RESULTING FROM ANY LOSS OR DAMAGE TO WIRELESS PROVIDER'S FACILITIES, EVEN IF CITY WAS ADVISED OF OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

8.3 The City and its officers, agents, elected or appointed officials, employees, departments, or boards and commissions (each as acting in their official capacity), shall not be liable to Wireless Provider or to its Affiliates or customers for any interference with or disruption in the operations of Wireless Provider's

Wireless Facilities or the provision of services, or for any damages arising out of or materially related to Wireless Provider's use of the ROW, except to the extent of willful misconduct or gross negligence on the part of the City by its officers, agents, elected or appointed officials, employees, departments, or boards and commissions.

8.4 Wireless Provider also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damages arising out of or materially related to any lawful provision or requirement of the City because of the lawful enforcement of these Standard T's and C's.

8.5 CITY HEREBY DISCLAIMS ANY REPRESENTATIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE POLE(S) FOR WIRELESS PROVIDER'S INTENDED PURPOSE OR ABSENCE OF DANGEROUS CONDITIONS ASSOCIATED WITH THE CITY-OWNED STRUCTURES AND ROW.

#### **SECTION 9. Term and Renewal**

The term for a RUSA shall be for ten (10) years and may be renewed for the equivalent duration unless the City makes a finding that the Utility Poles or Wireless Support Structure or Wireless Facilities do not comply with these Standard T's and C's, the RUSA's provisions, any Applicable Codes or local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, reasonable stealth and concealment requirements, or public safety and reasonable spacing requirements concerning the location of ground-mounted equipment.

#### **SECTION 10. Termination by Wireless Provider**

Wireless Provider may terminate a RUSA prior to its date of expiration at any time by providing the City with written notice and upon making arrangements satisfactory with the City Engineer to remove the Wireless Facilities within ninety (90) days from the date of the notice, unless the time is extended by the City Engineer. The City Engineer may agree in writing to allow Wireless Provider to abandon part or all its Conduit or Fiber in place in accordance with Section 45 of these Standard T's and C's.

#### **SECTION 11. Termination by City**

11.1 A Wireless Provider's failure to pay the annual fees within forty-five (45) days of the anniversary date of a RUSA for a site shall be grounds for the City to terminate that RUSA if the payment is not received by the City within twenty (20) business days from the date of the written notice to Wireless Provider.

11.2 City may, in addition to seeking any other remedy available to it, terminate the permission to attach to a particular Pole under a RUSA if Wireless Provider neglects or refuses to comply with any of the provisions of these Standard T's and C's beyond all applicable cure periods and fails within thirty (30) days after written notice from City to correct such neglect, refusal, or default provided Wireless Provider shall have up to ninety (90) days (or longer if approved by the City Engineer) if the nature of the cure is such that it reasonably requires more than thirty (30) days and Wireless Provider commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Such additional time shall be no more than is necessary to reasonably implement the cure.

11.3 Termination of a RUSA shall be commenced by delivery of written notice to Wireless Provider by the City and will state the reasons for the termination.

11.4 Wireless Provider's failure to operate its Wireless Facilities (except during specific periods expressly excused by these Standard T's and C's) once installed under any RUSA for a period of ninety (90) days within any twelve (12) month period or sixty (60) consecutive days of non-operation will be grounds for the termination of the RUSA at that location upon sixty (60) days' notice to Wireless Provider, unless within such sixty (60) day period Wireless Provider commences the use of such Wireless Facilities. Such time periods may be modified by the City Engineer for extenuating circumstances.

11.5 The RUSAs for the Wireless Facilities shall terminate, without notice: A) upon the institution by or against the Wireless Provider of insolvency, receivership, or bankruptcy proceeding or any other proceedings for the settlement of Wireless Provider's debts; B) upon Wireless Provider making an assignment for the benefit of creditors; or C) upon Wireless Provider's dissolution or ceasing to do business.

11.6 In the event of the City's termination of a RUSA, Wireless Provider shall have one hundred twenty (120) days (or longer if approved by the City Engineer) to remove the Wireless Facilities; provided however, that Wireless Provider shall be liable for and pay all fees that are due until Wireless Provider's Wireless Facilities are moved.

11.7 If after such time, the facilities have not been removed, the City shall have the right, after giving at least ten (10) days prior written notice to Wireless Provider, to remove the remaining Wireless Facilities, in which event such Wireless Facilities may be retained by City without accounting to Wireless Provider therefore, and the expense of such removal and repairs shall be charged to and paid by Wireless Provider without credit for the value, if any, of such Wireless Facilities. Failure to pay the charges within fourteen (14) days of the City's invoice billing for the amount will entitle the City to immediately draw upon the Wireless Provider's Deposit for the amount owed. Excepting damages resulting from the City's or its agents' gross negligence or willful misconduct, Wireless Provider shall defend, indemnify, and hold City harmless from and against all loss, liability, or expense resulting from such removal, including but not limited to claims of third parties.

11.8 Failure to Remove. Except for any Conduit or Fiber that the City allows to be abandoned in place, failure by the Wireless Provider to remove its Wireless Facilities within the one hundred twenty (120) day time period (or by the extension of time approved by the City Engineer) will result in immediate forfeiture of the Wireless Provider's Deposit. If the Wireless Facilities are attached to a third-party owned pole, the City will only remove the non-pole-attached portions of the Wireless Facilities. If Wireless Provider does not take possession of the Wireless Facilities and/or the non-pole-attached portions of the Wireless Facilities within sixty (60) days from removal from the Pole(s), Wireless Provider agrees to allowing the City to keep, sell, or dispose of such Wireless Facilities as the new owner.

## **SECTION 12. Assignment/Pledge of Small Wireless Facilities**

12.1 Except as otherwise set forth in these Standard T's and C's, the permission to attach an SWF to a City Pole is personal to Wireless Provider and Pole space is for Wireless Provider's use only. Wireless Provider shall not lease, sublicense, share with, convey, or resell to another any such space or rights granted hereunder.



12.2 Except as otherwise provided in these Standard T's and C's, Wireless Provider shall not transfer or assign the RUSAs without City's prior written consent; provided, however, the RUSAs may be sold, assigned, delegated, or transferred in whole or in part by Wireless Provider without any approval or consent of the City to Wireless Provider's parent, Affiliates, subsidiaries of its parent or to any entity which acquires all or substantially all of Wireless Provider's assets subject to these Standard T's and C's by reason of a merger, acquisition, or other business reorganization.

12.3 Any non-permitted transfer or assignment of the right to attach the SWFs to City Poles shall be void and not merely voidable. No cure or grace periods shall apply to transfers or assignment prohibited by these Standard T's and C's or to the enforcement against a transferee or assignee who did not receive City's consent.

12.4 Except for a permissible transfer or assignment as allowed by these Standard T's and C's, any assignment of a RUSA will not be effective or considered approved by the City until the person or entity to whom Wireless Provider is assigning the RUSA signs and delivers to City a document in which said assignee shall assume responsibility for all the Wireless Provider's obligations under these Standard T's and C's. Wireless Provider shall also provide to the City a summary of provisions of the transaction documents assigning its interests.

12.5 For any transfer and/or assignment not covered by Section 12.2 that involves the sale of any of the SWFs or sale/leaseback transactions or a transaction in which a third party gains a security interest in or any other type of ownership interest or financial claim to the SWFs, the Wireless Provider must give immediate notice to the City. Such transaction automatically revokes the permission the City has given to Wireless Provider to attach the SWFs to City Poles and will be grounds for termination of the RUSA. If the new owner or the entity with the security interest in the SWF does not enter into an acceptable RUSA with the City for permission to have the SWF attached to the City Pole within sixty (60) days of the sale or transfer of ownership or transaction that results in a security interest in the SWF, permits will need to be acquired to remove the SWF and removal of the SWF needs to be completed within thirty (30) days or within ninety (90) days of the transfer of ownership (whichever is earlier). Wireless Provider shall not be subject to this provision if it provides or maintains a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000), to guarantee that the new party or entity shall comply with these Standard T's and C's. Said bond shall be acknowledged by Wireless Provider, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Wireless Provider agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the Deposit required in Section 15.

12.6 For any assignment/transfer requiring City's consent, Wireless Provider shall pay to City in advance the sum of Five Hundred Dollars (\$500) as a nonrefundable fee for partial reimbursement of the legal, administrative, and other expenses related to every assignment/transfer. City shall not unreasonably withhold, condition, or delay requests for assignment that require City's consent.

12.7 Payment of any outstanding fees and/or any applicable pole use fee will need to be paid either by Wireless Provider or the subsequent new owner before any permits will be issued. City reserves the right to draw upon the entire Deposit if such payment is not made by the end of the thirty (30) day period referenced in Section 12.5 above.

### **SECTION 13. Protection against Liens on City Property**

13.1 Wireless Provider shall not do or allow or cause anything to be done whereby City's Poles may be encumbered by a construction lien or any other type of lien. Within forty-five (45) days after any lien is filed against City's Poles purporting to be for labor or materials furnished to Wireless Provider, Wireless Provider shall discharge or bond against such lien of record. Notice is hereby given that City will not be liable for any labor or materials furnished to Wireless Provider on credit and that no construction or other lien for any such labor or materials shall attach to or affect City's interest in and to City's Poles.

13.2 Wireless Provider shall indemnify, defend, and hold harmless City from all claims, demands, costs and liabilities, including reasonable attorney's fees and costs, relating to or arising out of any such lien or claim of lien.

13.3 Failure to remove any lien recorded against the Pole within forty-five (45) days of receipt of notice of recordation shall be considered a material breach of the applicable RUSA and grounds for termination by the City, unless there has been a good faith attempt to remove the lien.

### **SECTION 14. Performance Bond**

14.1 Prior to receiving any permit to construct, install, maintain, or perform any work on public property that requires a permit from the City pursuant to applicable City codes, Wireless Provider shall cause to be filed and maintain until either completion of the construction or termination of the applicable RUSA(s) as determined by Wireless Provider, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000) or the amount of the construction costs (whichever is greater). Said bond shall be acknowledged by Wireless Provider, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. City and Wireless Provider agree that the process and procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the Deposit required in Section 15.

14.2 If Wireless Provider has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

### **SECTION 15. Security Deposit**

15.1 Within thirty (30) days of the execution of its first RUSA, a Wireless Provider must procure and provide to the City a cash deposit or irrevocable letter of credit as a security fund ("Deposit") in the initial amount of Thirty Thousand Dollars (\$30,000). Once the number of RUSAs exceeds fifteen (15), the Deposit will need to be increased/decreased annually upon notice from City to Wireless Provider to reflect an amount equal to Two Thousand Dollars (\$2,000) per RUSA during the initial Term and Two Thousand Five Hundred Dollars (\$2,500) per RUSA during each Renewal Term, provided however, in no event shall the Deposit be less than Thirty Thousand Dollars (\$30,000). Said Deposit shall be maintained with the City as security for the compliance by Wireless Provider with these Standard T's and C's and any RUSA issued pursuant thereto, and the payment by Wireless Provider of any fees, claims, liens, and taxes due the City which arise because of the installation, operation, or maintenance of the Wireless Facilities, including the removal of such Wireless Facilities upon termination of any RUSA. The Deposit shall remain with the City until all Wireless Facilities have been removed and all sums due to the City have been fully paid.

15.2 Any letter of credit shall follow the standards and be in substantially the same form as set forth in Exhibit A and be approved by the City Attorney's Office. City shall have the full power of withdrawal of funds from the Deposit. No withdrawals shall be made from the Deposit without the prior written approval of the City Manager and no less than ten (10) business days prior written notice of intent to draw upon the Deposit to Wireless Provider.

15.3 Within twenty (20) days after notice to Wireless Provider that any amount has been withdrawn by City from the Deposit, Wireless Provider shall deposit with the City an additional amount so that the total amount of funds available to the City is the greater of Thirty Thousand Dollars (\$30,000) or Two Thousand (\$2,000) per RUSA during the Initial Term and Two Thousand Five Hundred Dollars (\$2,500) during the first Renewal Term. Any allowed subsequent renewal terms will increase the amount per RUSA by Five Hundred Dollars (\$500) over the previous amount required per term.

15.4 If Wireless Provider fails, within ten (10) business days of a notice of intent to draw on the Deposit, to either dispute the notice in writing; or pay City any taxes or fees due and unpaid; or fails to repay to City, within such ten (10) business days of such notice any damages, costs, or expenses which City shall be compelled to pay by reason of any act or default of Wireless Provider; or fails, within thirty (30) days of such notice of failure by City to dispute the notice in writing, or comply with any of this Standard T's and C's which City reasonably determines can be remedied by an expenditure of funds from the Deposit, City may immediately withdraw the amount thereof. Upon such withdrawal, City shall notify Wireless Provider within ten (10) days thereafter of the amounts and date thereof.

15.5 Any funds that City erroneously or wrongfully withdraws shall be credited to the Deposit, with interest of one percent (1.0%) per month, within thirty (30) business days of such a determination.

15.6 Upon termination of the last remaining RUSA, City will return the Deposit within sixty (60) days, but only after City reasonably determines that all obligations under this Standard T's and C's have been satisfied, including, but not limited to, any obligations to remove Wireless Facilities and restore the ROW to its prior condition.

15.7 Notwithstanding the above, the City will accept a surety bond or equivalent financial tool that would provide the same financial security to the City as an irrevocable letter of credit would. Indication of such alternative instrument shall be reflected on the RUSAs for that Wireless Provider.

## **SECTION 16. Wireless Provider's Records and Reports**

16.1 Wireless Provider shall keep records and provide information to the City upon reasonable request relating to the status of the construction and repair of Wireless Provider's Wireless Facilities.

16.2 If necessary for the City to determine Wireless Provider's compliance with these Standard T's and C's or other applicable law, within fourteen (14) days of written notice by City of a request for disclosure, Wireless Provider shall provide the information or access to relevant documentation as requested by City, respond to questions, and provide access to relevant books and records for the City's inspection and copying. Such records for inspection shall be available to City upon City's request at Wireless Provider's Arizona office. Wireless Provider shall also require its employees, agents, and accountants to give their full cooperation and assistance in connection with City's access to such records.

16.3 If Wireless Provider determines that to be able to respond to City's request for access to documentation for inspection, it must reasonably provide Proprietary Information, Wireless Provider shall so mark such documentation as "Confidential."

16.4 Such Proprietary Information shall include, but not be limited to any customer names and lists, financial information, technical information, or other information clearly identified as "Confidential" pertaining to services provided to customers.

16.5 Proprietary Information disclosed by Wireless Provider to the City or its constituent departments shall be regarded as Proprietary as to third parties. If the City receives a request to disclose such information, the City shall notify Wireless Provider of such request and allow Wireless Provider a reasonable opportunity to defend its information from disclosure.

16.6 Information that is already in the public domain shall not be considered Proprietary Information. If public domain information is included with Proprietary Information on the same document, the City shall only disclose those portions within the public domain.

16.7 Notwithstanding any provision in these Standard T's and C's, Wireless Provider acknowledges and understands that the City is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. § 39-121 et seq).

16.8 Reports. Upon the receipt of a reasonable written request and subject to any necessary confidentiality requirements, Wireless Provider shall provide and/or make available to the City for review copies of any communications and reports submitted by Wireless Provider to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of these Standard T's and C's.

#### **SECTION 17. Penalties for Violation of Terms**

City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Wireless Provider complies with these Standard T's and C's or applicable law. Such remedies are cumulative and may be pursued in the alternative.

#### **SECTION 18. Cancellation for Conflict of Interest**

Pursuant to A.R.S. § 38-511, City may cancel any RUSA within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the RUSA on behalf of City is or becomes at any time while the RUSA or an extension of the RUSA is in effect an employee of or a consultant to any other party to the RUSA with respect to the subject matter of the RUSA. The cancellation shall be effective when Wireless Provider receives written notice of the cancellation, unless the notice specifies a later time.

#### **SECTION 19. Notice**

19.1 All notices, which shall or may be given pursuant to this Standard T's and C's, shall be in writing delivered to the City or Wireless Provider by overnight express courier, registered or certified mail, return receipt requested, postage prepaid to the address below.

**CITY OF TEMPE:**

City of Tempe, City Engineer  
31 E. 5<sup>th</sup> St.  
Tempe, AZ 85281  
Phone: (480) 350-8200

With copies to:

Tempe City Attorney's Office  
21 E. 6<sup>th</sup> St., Suite # 201  
Tempe, AZ 85281  
Phone: (480) 350-8227

19.2 Unofficial notice may also be given by e-mail to a designated representative of the City and the Wireless Provider. Wireless Provider must provide a name, title, and address of the person to whom the City should send any notices and this information shall be included on all RUSAs. Should the information change, Wireless Provider shall notify the City of the updated information within ten (10) business days of the change.

**SECTION 20. Partial Invalidity**

If any section, paragraph, subdivision, clause, phrase, or provision of these Standard T's and C's shall be adjudged invalid or unenforceable, or determined to be preempted by federal or state laws or regulations, the same shall not affect the validity of these Standard T's and C's as a whole or any part of the provisions of these Standard T's and C's other than the part adjudged to be invalid, unenforceable, or preempted.

**SECTION 21. Non-Waiver**

Wireless Provider shall not be excused from complying with any of these Standard T's and C's by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

**SECTION 22. Force Majeure**

With respect to any of these Standard T's and C's, the violation or non-compliance of which could result in the imposition of a financial penalty, forfeiture or other sanction upon Wireless Provider, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Wireless Provider and is beyond its reasonable control.

**SECTION 23. Dispute Resolution**

23.1 If any dispute or claim arises out of the interpretation, performance or breach of these Standard T's and C's, the City and Wireless Provider, upon the written demand of either, will meet within two (2) weeks of such demand to attempt in good faith to resolve the dispute. The meeting will be attended by representatives of the City and Wireless Provider having the authority to resolve the dispute.

23.2 If the dispute is not resolved, the City and the Wireless Provider may agree to use nonbinding mediation. If nonbinding mediation is agreed to, the City and the Wireless Provider shall mutually agree

upon the services of one (1) mediator. The costs of nonbinding mediation, including any mediator's fees and the costs for the use of the facilities during the meetings (if any) shall be born equally between the City and the Wireless Provider. Each entity's costs and expenses will be borne by the entity incurring them.

23.3 If the dispute is not resolved within a reasonable time, both the City and the Wireless Provider shall be free to use other remedies such as nonbinding arbitration or litigation to resolve the dispute.

**SECTION 24. Governing Law**

These Standard T's and C's shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of these Standard T's and C's shall be instituted only in the courts located within Maricopa County, Arizona, including federal court.

**SECTION 25. Request for Different or Additional Terms**

A Wireless Provider may request different or additional terms that the City and the Wireless Provider shall negotiate in good faith. The City Manager or designee will have the authority to approve such terms or may, at his or her discretion, refer the request to the City Council for approval as per Section 29-19(I) of the Tempe City Code.

**SECTION 26. Exhibits**

All Exhibits referred to in these Standard T's and C's shall be deemed a part of these Standard T's and C's.

**SECTION 27. Amendments**

The City may amend these Standard T's and C's from time to time and the City Manager or designee will be authorized to approve such amendments. Applications for Wireless Facilities that are submitted after such amendments and the resulting RUSAs will be subject to such amendments, however RUSAs in effect prior to such amendments will be subject to and grandfathered in for the length of the current term. Upon any renewal of the RUSA, this Standard T's and C's in effect at the time of the renewal will apply.

## STANDARD CONDITIONS FOR INSTALLATION, OPERATION, AND MAINTENANCE

### SECTION 28. Application Review and Approval Process

28.1 Application Required. Whenever a Wireless Provider seeks to attach an SWF to an existing City Pole or replace an existing City Pole to add an SWF or to place a Monopole or Wireless Facility in the City's ROW, the Wireless Provider shall submit a written application (Application) to City together with the requested documents, details, plans and specifications required for City review and approval, and pay the applicable fee as set forth in Appendix A of the Tempe City Code. The form of such application will be set by the City Engineer, which may be modified as needed and a Site Plan will be required. The Application and its requirements shall be made publicly available. The City will determine the completeness for the SWF application no later than twenty (20) days after submittal of an Application that has all the required information and documents attached. For the installation of new Monopoles or new Utility Poles for an SWF or for the installation or collocation of Wireless Facilities within the ROW, the City will determine the completeness of the Application no later than thirty (30) days after submittal of an Application that has all the required information and documents attached.

28.1.1 Attestations Required. As part of the Application, the applicant must certify that the SWF will comply with the Federal Communication Commission's (FCC) regulations concerning radio frequency (RF) emissions as set forth in the FCC's Office of Engineering and Technology (OET) Bulletin 65 and 47 C.F.R § 1.1307 and that the SWF(s) will be collocated on the Utility Pole or Wireless Support Structure and that the SWF will be operational for use by a Wireless Services Provider to provide service within one hundred eighty (180) days after the RUSA/Utility Permit issuance date. The City and the Wireless Provider may agree to extend this period or if delay is caused by lack of commercial power at the site.

28.1.2 Acceptance. Acceptance of the Application will begin the review process to determine the completeness of the Application. Once the Application has been deemed 'complete', the City will begin its substantive review of the information and documents submitted to determine approval or denial.

28.1.3 Site Plan. It is the Wireless Provider's responsibility to ensure that the Site Plan correctly shows the work that the Wireless Provider or its Contractor intends to perform, that the Site Plan correctly shows all improvements and equipment that Wireless Provider intends to be located on the Use Areas, and that all areas of the ROW Parcel that will be occupied are identified. The elevations and locations occupied by any antennas and their supporting brackets must be identified, clearly defined, and correctly labeled on the Site Plan. Any proposed generators of any type (whether permanent or temporary) must be identified, clearly defined as to specific dimensions and plan for usage, and correctly labeled on the Site Plan. Any fiber optic cable within a Pole must be identified and the placement as such must be approved by the City.

28.1.3.1 The Wireless Facilities will exclude any item not shown on the Site Plan. Any refinement or other change to the Site Plan after the City approves the Application and issues the RUSA will void the approval, unless Wireless Provider obtains City's approval of the change pursuant to the City's plan approval process and the RUSA is amended with an updated Site Plan.

28.1.4 Batching Sites for Approval. A Wireless Provider seeking to collocate multiple SWFs may file a consolidated Application for the collocation of up to twenty-five (25) SWFs if the collocations each involve substantially the same type of SWF and substantially the same type of structure (a “batch”). All information required for one SWF, however, will still be required for all the SWFs contained within the consolidated application, except to the extent that such information would be unnecessarily duplicative. Individual RUSAs and Utility Permits will still be required for each location. A blanket Utility Permit may, however, be available for the batched sites when and if the sites are in close proximity. The Wireless Provider may request sites be batched at the time of the preliminary review.

28.2 Review Process. City will approve or deny an Application based on the availability of space at the location sought by Wireless Provider, Applicable codes, City code provisions or City regulations that concern public safety, objective design standards for decorative Utility Poles, reasonable stealth and concealment requirements, and public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in the ROW. Pursuant to the above, if the City determines that the Utility Pole or Wireless Support Structure will need to be replaced before the requested collocation, approval shall be conditioned on such replacement of the Utility Pole or Wireless Support Structure.

28.2.1 The internal process for approving an Application will be determined by the City Engineer and may be modified by the City Engineer whenever necessary to meet the needs of the City and the Wireless Provider. The approval process and any modifications to it shall be made publicly available. On a consolidated Application involving more than one collocation of an SWF, the City can remove any SWF collocation for which incomplete information has been provided or that does not qualify for consolidated treatment or that has been denied. Once an SWF collocation has been removed from the batch, it will be processed as though it were an individual Application.

28.2.2 When the review process is completed and an Application is approved by the City, the RUSA as submitted with the Application (or as amended) will be countersigned by the City. The execution of the RUSA will provide authorization for the Wireless Provider or its Contractor to be issued a Utility Permit.

28.2.3 Any refinement or other change to the Site Plan (as defined in the applicable RUSA) after the RUSA is executed is void unless Wireless Provider obtains City’s approval of the change pursuant to plan review processes and any applicable regulatory requirements. If Wireless Provider desires to change the location of any portion of the Wireless Facility from that set forth in the initial Application, Wireless Provider shall apply for and obtain approval for an amendment of the RUSA prior to installation or construction.

28.2.4 The appearance of and the specific equipment and dimensions of anything that will be installed in the ROW as part of the Wireless Facilities will be identified and attached as part of the Site Plan exhibit to the RUSA. 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 between the City and the Wireless Provider.

28.2.5 Wireless Provider shall design, specify, and supply all material associated with the installation, operation, and maintenance of the SWF or Monopole. The SWF shall be installed and maintained by or on behalf of Wireless Provider at Wireless Provider’s sole cost and expense.



28.3 Plan and Placement Approval Required. Wireless Provider's use of the public ROW and easements under the control of the City shall be according to plans approved by the City Engineer, provided that such approval shall not be unreasonably withheld or delayed. The location, spacing, size, and appearance of any related pole-mounted or ground-based equipment (microwave dishes, radios, relays, power supplies, meters, etc.), enclosures, cabinets, and pedestals placed in the ROW must be approved by the City Engineer.

28.4 Waiver Required for New Verticality. Any new poles or vertical structures sought to be placed in the ROW will need an approved waiver as per Chapter 29-29.

28.5 Design Standards and Stealth and Concealment Requirement Compliance. SWFs should blend in to the surrounding streetscape with minimal visual impact. Wireless Providers and Contractors shall comply with the City's established objective Design Standards and reasonable Stealth and Concealment Requirements relating to the appearance and installation of all Wireless Facilities in the ROW, to the extent technologically feasible. The City Engineer shall be responsible for establishing and updating, modifying or supplementing such design standards and stealth and concealment requirements to address relevant changes in law, technology, or administrative processes. The design standards and stealth and concealment requirements and any updates, modifications or supplements shall be made publicly available. Any future modifications of such Wireless Facilities must maintain the stealth and concealment elements required for the original Wireless Facilities, unless otherwise approved by the City.

28.6 Timelines for Determination of Completeness and for a Decision.

28.6.1 Within twenty (20) days after receiving an application for an SWF or thirty (30) days after receiving an application for the modification of existing or the installation of new Monopoles, Utility Poles, or Wireless Facilities or for the collocation of Wireless Facilities, the City shall determine and notify the applicant whether the application is complete. If the City determines that the application is incomplete, the City will notify the applicant and specifically identify the missing information. If the applicant is not notified within the twenty (20) day or thirty (30) day period (whichever is applicable), the application is deemed complete.

28.6.2 The City will approve or deny an Application for an SWF no later than seventy-five (75) days from when the Application is deemed to be complete.

28.6.3 A decision for the Collocation of Wireless Facilities shall be made within ninety (90) days from when the Application is deemed to be complete. This time period may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the City and the Wireless Provider.

28.6.4 A decision for the modification of existing or the installation of new Monopoles, Utility Poles, or Wireless Facilities shall be made within one hundred fifty (150) days from when the Application is deemed to be complete. The time period may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the City and the Wireless Provider.

28.7 Denial of an Application. The City will document any basis for the denial of an Application by reference to the specific Code provision, regulations, or requirement on which the denial was based and

this information will be sent to the applicant on or before the date of denial. An applicant may cure the deficiencies identified by the City and resubmit the application within thirty (30) days after the denial without having to pay an additional Application fee. The City shall approve or deny the revised Application within thirty (30) days after receiving it and subsequent review will be limited to the deficiencies cited in the original denial. If the deficiencies have not been cured, the City will deny the Application and indicate the basis for the continued denial.

## **SECTION 29. Work Within the Right-of-Way**

29.1 Wireless Provider's Wireless Facilities to be constructed, installed, operated, maintained, upgraded, and removed hereunder shall be located or relocated to interfere as little as possible with traffic or other authorized uses within said public ROW and easements. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of said Wireless Facilities shall be subject to regulation by the City Engineer.

29.1.1 General Maintenance. The Wireless Facility site, including but not limited to all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans and the RUSA.

29.1.2 Good Condition Required. Wireless Facilities shall always be kept and maintained in good condition, order, and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.

29.1.3 Clean Up. Wireless Provider and/or its Contractor(s) shall, during installation, relocation, or removal of the Wireless Facilities and upon completion of such work, remove all temporary construction materials and equipment, debris, and unused materials provided for in the work, and put the work site and public ROW in a safe, neat, and clean condition.

29.1.4 Graffiti Removal. Wireless Provider shall always keep and maintain its Wireless Facilities and Monopoles free of all graffiti. City shall notify Wireless Provider in writing if graffiti is on the Wireless Facilities. If Wireless Provider fails to remove the graffiti within thirty (30) days after notice in writing is received, City shall have the right to abate any graffiti present and Wireless Provider shall reimburse City for all costs directly attributable to such abatement within thirty (30) days of City's presenting Wireless Provider with a statement of such costs. Failure to reimburse City within this period will allow City to deduct such amount owed from the Deposit.

29.2 Changes to Facilities. Any changes, modifications or replacements of the Wireless Facilities must conform to the design standards and stealth and concealment requirements the City has for such Wireless Facilities. If a Wireless Provider desires to change the components of the Wireless Facilities that will impact the ROW or its visual effect, written approval of such change must be obtained from a representative of the City Engineer.

29.2.1 When Approval for Changes is not Required. The following types of changes shall not be deemed to impact the ROW, such that written approval shall not be required, however, an approved Traffic Control Plan may still be required: A) a change to a Wireless Facility involving only substitution of internal components that does not result in any change to the external appearance, dimensions, or weight of the Wireless Facility; or B) a replacement of a Wireless Facility with a Wireless Facility that is the same or smaller in weight and dimensions as the

previously approved Wireless Facility; or C) a replacement of a component or components of a Wireless Facility with a component or components that is/are the same or smaller in weight and dimensions as the previous component or components.

### **SECTION 30. Safety Requirements**

30.1 Prevention of Failures and Accidents. Wireless Provider and any of its Contractors shall always employ ordinary and reasonable care to install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. Wireless Provider and Wireless Provider's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the Wireless Facilities are being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Wireless Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Wireless Provider from compliance with these provisions.

30.2 General Safety Requirements. All work in the ROW will be performed only by a Licensee and its contractors and the Wireless Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in compliance with the Tempe City Code, applicable City policies, the Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("M.A.G.") as amended, Tempe Supplement to the M.A.G. Uniform Standard Details and Specifications, Tempe Engineering Design Criteria, City of Tempe Utility Permit and Construction Manual, National Electric Code (NEC), National Electric Safety Code (NESC), and OSHA regulations. All work in the ROW shall be performed in such manner that will not interfere with the use of other property.

### 30.3 Radio Frequency Radiation Safety Requirements.

30.3.1 Wireless Provider shall provide a written certification as part of its Application that the SWF will comply with the FCC Radio Frequency Exposure Guidelines (FCC OET Bulletin 65 and IEEE C95 Standards) and all other applicable radio frequency emissions laws and regulations in effect from time to time, including, FCC's RF for "general population/uncontrolled exposure" and for "occupational/controlled exposure". If the Wireless Facilities are "categorically excluded" from the requirement for routine environmental processing for RF exposure pursuant to 47 C.F.R. § 1.1307(b)(1), Wireless Provider shall confirm this in writing to the City.

30.3.2 City may, at its expense, perform tests as necessary to determine compliance of the Wireless Facilities on the City-owned Poles or Wireless Support Structures or in the ROW with federal radio frequency exposure limit rules, 47 C.F.R. Section 1.1310, or subsequent federal rules as amended from time to time.

30.3.3 For any Wireless Facilities that are not categorically excluded, Wireless Provider shall conduct an initial test for compliance with federal radio frequency exposure limit rules prior to placing the Wireless Facilities on City-owned Pole or Wireless Support Structures or in the ROW into commercial operation, and Wireless Provider shall perform additional tests upon any significant change in the Wireless Facilities. All such testing shall be performed by a qualified radio

frequency engineer, and a copy of the test results shall be provided to the City upon request. If such tests show noncompliance with applicable radio frequency exposure limit rules then in effect, then noncompliant Wireless Facilities shall be immediately shut down (except for work necessary to bring it into compliance) until subsequent tests again show compliance with such rules.

30.3.4 City Worker Safety. Both OSHA and the FCC require that individuals with exposure to RF signals in their work environments be made aware of the safety issues and how to properly mitigate them. State-mandated access to the City's ROW and City-owned poles by Wireless Provider's for SWFs now expose City workers and its Contractors to such RF emissions.

30.3.4.1 To perform duties necessary as owner and manager of the ROW, the City's employees, agents, and representatives must have uninterrupted and safe access to the ROW and all structures located thereon. To ensure the safety of those working on or near Wireless Provider's SWF, the Wireless Provider must:

30.3.4.1.1 Power Shutdown. Provide a power shutdown method for the City's employees, agents, or representatives ("kill switch") to turn off all power to the Licensee's Facilities while City secures the site during an Emergency, such as a pole knock down. This will allow staff and first responders to be able to power down the site to stop the RF emissions. These can include:

- A) Providing a key to the meter pedestal or equipment box for breaker access.
- B) Meter pedestal or equipment box locked with cut-able padlock seal.
- C) Access to ground accessible fuse in hand hole or J-box.
- D) Any other method allowing immediate on-site shutdown.

30.3.4.1.2 On-Call Technician. Within 24 hours of a request and upon coordination with the City as to the scheduling, Wireless Provider will 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. Upon deactivation, City workers will then be able to perform the maintenance or repair work to the City-owned poles. Upon completion of the work, City's employee shall contact the Wireless Provider's NOC and inform them that the site may reactivate the RF signals.

30.4 Point of contact. Wireless Provider shall provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods.

30.5 Notifications. Prior to the start of any construction work, Wireless Provider shall notify all adjoining residents or businesses that share a common boundary with the approved site at least forty-eight (48) hours in advance of any street, alley, sidewalk, and driveway closures and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area. If an Emergency requires activity without such written notice, Wireless Provider shall use reasonable best efforts to provide timely actual notice to the owners or other persons having lawful control of the adjoining property. Upon request, Wireless Provider shall promptly furnish to City documentation of such notice to the adjoining property owner or resident.

30.5.1 Notice shall be accomplished by door hanger or by mail and shall include the project location, address, general description, equipment dimensions, a site plan, a photo rendering, Licensee contact information, and a construction schedule. Licensee shall include a copy of the notification with the Application. Wireless Provider shall reply, address, and if possible, resolve residents' concerns relating to the proposed SWF or Monopole promptly, before installation if the proposed facilities are approved, and in a professional manner.

## **SECTION 31. Conduit and Fiber Installation**

31.1 Wireless Providers can also use approved portions of the ROW for the installation of underground Conduit and fiber lines as is necessary to operate its SWF or Wireless Facility on a Monopole. A map of the Conduit/fiber route must be provided to the City as part of its Application. The Wireless Provider should internally coordinate its transport and communication functions to try to prevent unnecessary street cuts and deployment delays caused by such failures to communicate and coordinate.

31.2 Location. Although the exact placement and location of any additional Wireless Facilities shall be determined by City through the approval process, the City's preference is to have any Conduit or fiber installed outside of the paved street areas whenever such location is feasible and reasonable.

31.3 Co-location. Wireless Provider's installation of the Conduit System shall be reasonably coordinated with other utilities and City to accommodate opportunities for common installation along Wireless Provider's route. All installations of cable and/or fiber shall be in Conduit or innerduct as reasonably approved by the City Engineer. Provided, however, nothing herein shall require Wireless Provider to incur any material or unreasonable additional expense to accommodate common installations.

31.4 Interference. Any Conduit System to be constructed, installed, operated, and maintained shall be located or relocated to interfere as little as possible with traffic, existing utilities, or other authorized uses over, under, or through said streets and public ways. Wireless Provider shall not install, operate, or allow the use of Conduit System equipment, methodology, or technology that may or would 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, Wireless Provider shall immediately discontinue using the Conduit System equipment, methodology, or technology that causes the interference until Wireless Provider takes corrective measures to alter the Conduit System to eliminate such interference. Any such corrective measures shall be made at no cost to City. Wireless Provider shall be responsible to ensure compliance with this Standard T's and C's by all persons using the ROW through or under Wireless Provider or these Standard T's and C's.

31.5 Method of Installation. Conduit should be placed by horizontal directional drilling under such streets when feasible and reasonable. Arterial streets shall not be bored unless approved by the City Engineer.

31.6 Installation. Any new Conduit or fiber placed in the ROW will be constructed using industry standard horizontal directional drilling and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string,

and conduit plugs. Wireless Provider and/or its Contractor(s) will install any new Conduit and access points (manholes/pull boxes) using industry standard practices and in full compliance with Uniform Standard Specifications and Details for Public Works Construction sponsored and distributed by M.A.G. as amended, the City's supplements to M.A.G., and the City of Tempe Utility Permit and Construction Manual.

31.7 Blue Stake. Wireless Provider and its Contractor(s) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Wireless Provider's underground facilities and Conduit upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the agreement or proof of membership shall be filed with the City Engineer prior to execution of these Standard T's and C's.

31.8 Restoration. Whenever the installation, use, maintenance, removal, or relocation of any of Wireless Provider's Wireless Facilities is required or permitted under this Standard T's and C's, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Wireless Provider, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface, and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer within seven (7) business days from date of the damage, unless an extension of time is agreed to by the City Engineer. If Wireless Provider does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Wireless Provider, to perform or cause to be performed such reasonable and necessary work on behalf of Wireless Provider and to charge the Wireless Provider for the actual and reasonable costs incurred by the City at City's standard rates.

31.9 Pavement Damage Surcharge. If a street opening in new pavement or resurfaced pavement cannot be avoided, Wireless Provider a surcharge fee to cover damages and early deterioration will be assessed for cutting new or resurfaced pavements less than seven (7) years old as per Tempe City Code Section 29-19 and Appendix A.

31.10 Separation. Wireless Facilities or Monopoles may not be in areas where they will cause damage to or interference with other utility facilities or interference with a utility's use of the utility's facilities located or to be located within the ROW.

31.11 Inspections. The City shall have the right to inspect all construction or installation work performed in the ROW and to make such tests as it shall find necessary to meet City standards as set forth in the City of Tempe Utility Permit and Construction Manual and the M.A.G. Uniform Standard Specifications and Details for Public Works Construction and the City of Tempe Supplements thereto and to ensure compliance with these Standard T's and C's and other pertinent provisions of law. Wireless Provider shall cooperate with all inspections.

## **SECTION 32. Use of Poles in the Right-of-Way**

32.1 The determination of whether a City Pole or location within the ROW is available or unavailable for the attachment or placement of an SWF shall be within City's discretion. Within the limitations of state law, City reserves the right to disallow the attachment of an SWF on any Pole or the placement of

an SWF in the ROW for reasons including, but not limited to, noncompliance with the City's design guidelines and/or stealth or concealment requirements, insufficient capacity of the Pole, insufficient square footage in the ROW to accommodate the proposed location of the ground equipment, unable to maintain minimum offsets from proposed Pole and/or equipment to existing underground utilities, safety, reliability, or engineering concerns.

32.2 City's act or failure to act regarding unauthorized use of the ROW by placement of an SWF or other Wireless Facility without approval of an application shall not be deemed a ratification or approval of the unauthorized use; and any authorizations City subsequently gives to Wireless Provider for the right to use the Pole shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under these Standard T's and C's or a RUSA.

32.3 City may require Wireless Provider to remove any unauthorized attachment to a Pole or unauthorized placement of an SWF within the ROW. If Wireless Provider has failed to remove Wireless Provider's SWF from City's Pole(s) within thirty (30) days after City notified Wireless Provider of the unauthorized attachment, City may remove Wireless Provider's SWF without liability to Wireless Provider, in which circumstance Wireless Provider shall reimburse City upon demand for the reasonable cost City incurred in making such removal. Except to the extent caused by the gross negligence or willful misconduct of the City and its agents, employees and assigns, Wireless Provider shall defend, indemnify, and hold City harmless from and against all loss, liability, or expense (including but not limited to claims of third parties) resulting from the removal of such unauthorized attachment. Placement of an SWF in the ROW without the City's express written permission shall constitute trespass.

### **SECTION 33. Installation on Poles**

33.1 Wireless Provider or Wireless Provider's Contractor is required to obtain a Utility Permit prior to starting construction and to order City inspections during and upon completion of installation of any SWF. Installation will be inspected for adherence to plan specs, safe operation, workmanship, aesthetics, and/or interference with streetlight or traffic operations. Post-installation inspection of an SWF by City shall be performed within thirty (30) days of the installation. If City objects to the installation for reasonable reasons stated, Wireless Provider will be required to remove the SWF and resubmit design/installation plan. The Pole may not be altered without the City's written permission, except as otherwise permitted by applicable law, this Standard T's and C's, or the applicable RUSA.

33.2 Replacement Poles. When Wireless Provider and the City have agreed on an existing City Pole location as a suitable site for an SWF, but the City determines the existing Pole needs to be replaced to accommodate the installation of such SWF, then the following will apply:

33.2.1 Wireless Provider shall be responsible for design and construction of replacement Pole and pay all costs related to Pole replacement, including but not limited to Pole replacement, transfer of all existing facilities, and removal and salvage of the existing pole to the City of Tempe. Payment of Pole replacement costs does not provide Wireless Provider with any ownership interest in the replacement Pole. The City shall be the owner of the replacement pole.

33.2.2 Any replacement Pole will need to conform to the height restrictions imposed by the City and the arm height of the street light must conform to the existing arm height of the other street light structures in the adjacent area. The Pole will also need to conform to the Tempe

Supplement to the M.A.G. Uniform Standard Details and Specifications for Public Works Construction.

33.2.3 All performance required by Wireless Provider under this entire Section 33.2 shall be at Wireless Provider's expense. City will own the original pole and all replacement poles.

33.3 Any re-installation of an SWF shall be at Wireless Provider's sole cost and expense.

33.4 These requirements do not diminish the plans approval or any other requirement of these Standard T's and C's.

33.5 Wireless Provider shall not be entitled to reimbursement from City of any amounts paid to City for Pole replacements nor for rearrangement of attachments on the City's Poles due to the use by City or other user(s) of any additional space resulting from such replacement or rearrangement. This Section does not limit Wireless Provider's right to reimbursement from any other user or third party pursuant to Section 3.4.

33.6 Should City, or other authorized Pole user, require access to the Pole and such access is restrained because of Wireless Provider's SWF, Wireless Provider shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with City safety standards, which may require temporarily ceasing operations to comply with such standards.

33.6.1 Subject to obtaining permission of the owner(s) of non-City owned poles that may exist in the ROW, the City authorizes and permits Wireless Provider to enter the ROW to install an SWF on such third party owned poles, subject to approval of a RUSA and payment of any applicable fees.

33.6.2 All Wireless Provider SWFs shall be installed and maintained in accordance with the requirements of the National Electric Code, the National Electrical Safety Code, the National Fire Protection Association Standards, the Occupational Safety and Health Administration and any other applicable federal, state, and local laws. All fees, notices, permits, approvals, certifications, and licenses required for the installation, maintenance, and operation of Wireless Provider's SWFs shall be obtained and paid for by Wireless Provider and proof of such shall be provided to City at no charge and upon request by City, prior to the start of work.

33.7 Electricity. Wireless Provider shall install or cause to be installed a separate electric meter on the Pole and will pay all actual electricity charges assessed by Salt River Project (SRP) and/or Arizona Public Service (APS) for all power usage of the SWF. Any third-party equipment needed to service the Wireless Facilities shall be required to apply for and obtain separate permits. The City shall not provide easements within the ROW to Wireless Providers or third parties.

#### **SECTION 34. Maintenance/Modifications**

34.1 Maintenance of an SWF or Monopole shall be performed by Wireless Provider at Wireless Provider's sole cost and expense. Wireless Provider will need to obtain the appropriate permits for work in the ROW (Special Use Permit for work in the ROW), Utility Permit for any work on ground mounted equipment to access the Poles, and will also need to submit for a Barricade Permit (traffic control permit issued by Traffic Engineering), if applicable.



34.2 Wireless Provider will perform routine maintenance, repair, and installation of an SWF or Monopole in accordance with all City ordinances, rules, and regulations.

34.3 Damaged or deteriorated components must be corrected within five (5) business days of notification or such extended time as allowed by the City Engineer. If the components are taken out of service, Wireless Provider must remove them within thirty (30) business days of being taken out of service.

34.4 Wireless Provider shall be responsible for any relocation/reinstallation costs associated with Pole replacement resulting from routine Pole maintenance.

34.5 Other than in connection with the replacement of an existing Pole for the initial installation of an SWF, in the event a City Pole containing an SWF is reasonably determined by the City as needing to be replaced due to damage caused by Wireless Provider or a third party, City will notify Wireless Provider and Wireless Provider agrees to replace the Pole within fourteen (14) days or by an extended deadline as allowed by the City Engineer. If the Pole is damaged by Wireless Provider or a third party and needs to be replaced, Wireless Provider shall replace the Pole entirely at its expense. If the damage is caused by a third party, Wireless Provider will replace the Pole and City will reimburse Wireless Provider the cost of a City of Tempe standard detail Pole. During this fourteen (14) day period (or the extended time period if applicable), Wireless Provider shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during replacement. City disclaims any and all liability to Wireless Provider for any loss of services because of the SWF being unable to function from its previous location on the Pole. The City will reimburse Wireless Provider for the cost of a standard light Pole within forty-five (45) days of City's receipt of an invoice, but Wireless Provider will be responsible for any cost of the Pole in excess of that amount. Once the Pole has been replaced, Wireless Provider will be allowed to re-install the SWF on it at Wireless Provider's sole expense and City will install its lighting apparatus and wiring at its sole cost. In the event of localized interruptions (e.g., motor vehicle accidents), City shall notify Wireless Provider of the incident after taking any required actions to clear and restore the site. Wireless Provider will be responsible for collection of any damages for damaged Wireless Provider equipment from a third party that caused the damage.

34.6 Wireless Provider shall be responsible for and reimburse the City for any and all damages to the Pole(s) caused by Wireless Provider and/or its Contractors.

34.7 If Wireless Provider's SWF is not transferred and/or placed and maintained in accordance with the terms and conditions of this Standard T's and C's and Wireless Provider has not corrected any Wireless Provider-caused violation within thirty (30) days from its receipt of a written notice from City (or such longer time as may be reasonable under the circumstances), the City may, at its discretion, correct the violation at Wireless Provider's expense and deduct the actual and reasonable charges from the Deposit.

34.8 Any upgrade and/or modification to the SWF or Wireless Facilities will need specific approval from the City and require Wireless Provider to submit the information required by Section 28. Any approval required from the City must be obtained in writing from the City Engineer or designee. Notwithstanding the prior two sentences, the following upgrades and/or modifications or changes shall not require Wireless Provider to submit the information required by Section 28 nor require the City's specific approval: A) a like for like replacement; B) a change to an SWF involving only substitution of internal components that does not result in any change to the external appearance, dimensions, or weight; C) a replacement of an SWF with one that is the same or smaller in weight and dimensions and in appearance

or concealment as the previously approved SWF; or D) a replacement of a component or components of an SWF with a component or components that is/are the same or smaller in weight and dimensions and in appearance or concealment as the previous component or components. Any upgrades, changes, modifications, or replacements of the Wireless Facilities must conform to the design standards and stealth and concealment requirements the City has for such Wireless Facilities.

### **SECTION 35. City Maintenance of City-owned Poles**

City shall have the right to operate, replace, and maintain all City-owned poles or structures in such manner as best serves City's service requirements including, but not limited to, the right to allow the attachment of additional facilities. Wireless Provider agrees to shut down communications and electrical equipment during any time City is maintaining, testing, or replacing the City-owned pole or structure within 24 hours from the notice. If Wireless Provider fails to shut off the equipment within 24 hours from the notice, Wireless Provider shall reimburse City for its costs related to the delay including time and labor expenses. The reimbursement will be at a minimum of Five Hundred Dollars (\$500) per incident. Failure to shut off the equipment will be deemed to be a breach of the RUSA for that site.

### **SECTION 36. Interference**

36.1 Wireless Provider will use and operate an SWF in a manner that will not cause harmful interference including, but not limited to, blocking of access to the Pole, electrical interference, radio frequency (RF) interference, or mechanical interference to the City's and other users' use of the Pole, provided that such other users' installation predates the installation of such SWF. If applicable, City agrees to supply Wireless Provider with a list of other attachers or users on any Pole, which is to be used by Wireless Provider, together with the respective transmission frequencies thereof. Wireless Provider shall not install, operate, or allow the use of equipment, methodology, or technology that may or would 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, Wireless Provider shall immediately discontinue using the equipment, methodology, or technology that causes the interference until Wireless Provider takes corrective measures to eliminate such interference. Any such corrective measures shall be made at no cost to City. Wireless Provider shall be responsible to ensure compliance with this Standard T's and C's by all persons using the ROW through or under Wireless Provider or this Standard T's and C's.

36.1.1 In the event any such interference occurs, Wireless Provider will: A) remedy such interference as soon as possible but no later than within seventy-two (72) hours after receipt of written notice from City, conditioned on City's ability to support corrective actions, if required, or B) cease operation of the Wireless Facilities until such interference can be eliminated with City's support, if required. Upon extenuating circumstances shown by the Wireless Provider, the City Engineer may extend the 72-hour time period.

36.1.2 If such interference is not eliminated within said seventy-two (72) hours (or extended period, if applicable), City will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Wireless Provider's sole cost and expense, to disable the SWF to eliminate such interference (after giving reasonable prior notice to Wireless Provider of City's intent to do so). City shall have the right to terminate Wireless Provider's right to attach the SWF causing such interference by giving at least sixty (60) days'

notice to Wireless Provider to remove the SWF permanently from the Pole, unless within such sixty (60) day period, Wireless Provider cures any interference.

36.2 Should City, Wireless Provider, or other authorized users require access to a Pole and such access is restrained because of City's or Wireless Provider's operational equipment, City and Wireless Provider shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with City's safety standards, which may require temporarily ceasing wireless operations to comply with such standards.

### **SECTION 37. Traffic Control**

37.1 When applicable, Wireless Provider shall submit a Traffic Control Plan to Traffic Engineering for approval one week prior to beginning work under a RUSA. It shall be noted that traffic under this Standard T's and C's shall include all motor vehicles, bicyclists, and pedestrians. Wireless Provider shall not begin work until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of work, otherwise work will cease until the Traffic Control Plan is approved. All traffic shall be regulated in accordance with M.A.G.; the City of Tempe Barricade Manual, latest edition, available through the City of Tempe Traffic Engineering; the Manual on Uniform Traffic Control Devices (MUTCD); and any special provisions included herein.

37.2 Wireless Provider shall have the full responsibility and liability for traffic control for work performed by Wireless Provider or their Contractors. In the event Wireless Provider or its Contractor(s) damages any traffic signal equipment, traffic signal conduit, loop detectors and/or circuits, it shall have them repaired immediately at its expense by an electrical Contractor that has had traffic signal experience which is pre-approved by the City. Any damage caused by Wireless Provider or its Contractor(s) that is repaired by the City will be billed to Wireless Provider at two times the cost.

37.3 To the extent reasonably possible, pedestrian access shall be maintained along the length of the project at all times per the requirements of the Americans with Disabilities Act and as approved by City of Tempe Traffic Engineering.

37.4 During construction, it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices: "Traffic Control for Streets and Highway Construction and Maintenance Operations"; the latest edition of the City of Phoenix Traffic Control Manual; or the City of Tempe Barricade Manual, latest edition. The most restrictive manual shall apply. Wireless Provider shall pay all applicable barricade fees.

### **SECTION 38. Hazardous Substances**

38.1 Wireless Provider agrees it will not produce, dispose, transport, treat, use, generate, or store any Hazardous Substances on, under, about, or within the area of the Pole and ROW in violation of 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., or the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. or any other federal, state, county, or local law or regulation.

38.2 Wireless Provider may not use the ROW in a manner that would require a permit or approval related to Hazardous Substances from the Arizona Department of Health Services or any governmental agency other than the City.

38.3 Wireless Provider will pay, indemnify, defend, and hold City harmless against any loss or liability incurred because of any Hazardous Substance produced, disposed of, or used by Wireless Provider pursuant to this Standard T's and C's and must immediately notify City of any Hazardous Substance discovered at any time that is unlawfully present upon the ROW. Wireless Provider will ensure that any on-site or off-site storage, treatment, transportation, disposal, or other handling of Hazardous Substance pertaining to Wireless Provider's use of the ROW will be performed by persons who are properly trained, authorized, licensed, and otherwise permitted to perform those services.

38.4 Wireless Provider is not responsible for Hazardous Substances that may exist in the ROW if Wireless Provider's Contractors and/or any other persons using the ROW under this Standard T's and C's did not do any of the following:

38.4.1 Participate in the Hazardous Substance coming to the ROW.

38.4.2 Participate in spreading or otherwise disturbing the Hazardous Substance following discovery of such Hazardous Substance.

38.5 Wireless Provider understands the hazards presented to persons, property, and the environment by dealing with Hazardous Substances. Wireless Provider acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Hazardous Substances containing materials.

38.6 Within twenty-four (24) hours after any violation by Wireless Provider and/or by its Contractor(s) of this Standard T's and C's pertaining to Hazardous Substances, Wireless Provider shall give City notice reporting such violation at the phone number set forth in Section 44.3.1.

### **SECTION 39. On-Call Assistance**

Wireless Provider shall be available to staff employees of any City department having jurisdiction over Wireless Provider's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its Wireless Facilities. City may contact by telephone the Network Operations Center operator at a phone number to be provided to the City regarding such problems or complaints, and may use that number to reach Wireless Provider at any time for any Emergency matter. Wireless Provider shall use reasonable efforts to respond to any issues within the time frames specified in these Standard T's and C's or the applicable RUSA. Wireless Provider shall handle or otherwise make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence.

### **SECTION 40. Mapping Requirement**

40.1 Wireless Provider shall maintain drawings of its Wireless Facilities located within the ROW and furnish a copy both electronically in an ESRI-compatible mapping format (or in a mapping format compatible with the current City electronic mapping format as specified by the City) and in hard copy form. Upon completion of new or relocation construction of Wireless Facilities in the ROW, Wireless Provider shall create and maintain precise, up-to-date maps of any of its Conduit System routes and any

other above ground equipment located in the ROW and precise and verifiable horizontal and vertical location information and will make this information available to the City upon such installation. Wireless Provider will also provide surface-location marking of any portion of Wireless Provider's Wireless Facilities that are located underground within any public ROW within ten (10) business days of installation.

40.2 In the event Wireless Provider fails to supply records in the City specified format and there is a cost to the City in converting Wireless Provider-provided files, Wireless Provider will be responsible for the conversion costs and will pay such actual and reasonable costs within thirty (30) days of the date of the bill from the City invoicing the amount due.

#### **SECTION 41. Relocation**

41.1 If City deems it necessary, in connection with the installation, operation, maintenance, replacement, relocation, or removal of City Poles or the facilities located on City Poles, to relocate Wireless Provider's SWF attached to City's Pole for a public project, the City may require Wireless Provider to relocate the SWF to another location on the ROW (the "Alternate Property") provided: A) the Alternate Property is similar to Wireless Provider's current premises in size and is compatible for Wireless Provider's use; B) City shall give Wireless Provider at least one hundred eighty (180) days written notice before requiring Wireless Provider to relocate; and C) Wireless Provider shall be allowed if necessary to place a temporary cell site and antenna structure on the ROW during relocation.

41.2 Wireless Provider shall perform the relocation work at its own expense.

41.3 City or its contractors may perform any part of the relocation work that has not been performed within the allotted time. Wireless Provider shall reimburse City for its actual, reasonable costs in performing any relocation work. However, City has no obligation to move Wireless Provider Wireless Facilities.

41.4 Wireless Provider shall relocate, at no expense to the City, any Wireless Facilities or other encroachment installed or maintained in, on, or under any public place or ROW, as may be necessary to facilitate any public project, including but not limited to transit projects such as Light Rail or Streetcar or any City project whenever directed to do so by City. The City will assist the Wireless Provider in finding a new location for the relocated facility. If feasible and necessary, the Wireless Provider will be allowed to place a temporary facility at the appropriate location during relocation activities.

41.5 However, to the extent that the City receives funds from any third parties or government entities for a project that requires the relocation of Wireless Facilities owned, operated, and/or maintained by the Wireless Provider, the City shall allocate such funds to the relocation of Wireless Provider's Wireless Facilities. If more than one user of the ROW is required to relocate for the same project, and is eligible for reimbursement, any such funds shall be distributed on a pro rata basis based on the total relocation costs of each of the ROW users eligible for such reimbursement. Wireless Provider shall not hold the City liable for failure to request or file a claim for any funds for the relocation of the Wireless Provider's Wireless Facilities.

41.6 Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to these Standard T's and C's and any applicable issued permits. Within one hundred eighty (180) days after service of notice by the City, Wireless Provider shall remove the designated portions of the Wireless Facilities, or in the

event that, by the nature of the removal such removal cannot be performed within the 180-day period, Wireless Provider shall take reasonable steps to remove the Wireless Facilities and diligently prosecute the removal to completion and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.

41.7 Wireless Provider agrees to obtain a permit as required by this Standard T's and C's prior to removing, abandoning, relocating, or reconstructing any portion of its Wireless Facilities on public property or ROW. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Wireless Provider is required to make repairs that are of an Emergency nature or because of an unscheduled disruption of the Wireless Facilities. Wireless Provider will maintain any annual permits required by the City for such maintenance and Emergency repairs. Wireless Provider will notify City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

41.8 If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such relocation costs by drawing upon the Deposit required by these Standard T's and C's pursuant to Section 15.

41.9 Wireless Provider shall be solely responsible for the relocation of any Licensee Facilities placed on a structure or property not owned by City or wrongly designated as a City-Owned Structure and/or ROW at any time.

#### **SECTION 42. Damage to Public Property**

42.1 In addition to any indemnity obligation under this Standard T's and C's, whenever the installation, use, maintenance, removal, or relocation of any of Wireless Provider's Wireless Facilities is required or permitted under this Standard T's and C's, and such installation, removal or relocation damages or disturbs the surface or subsurface of any ROW or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Wireless Provider, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface, and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Wireless Provider does not repair the damage or disturbance as just described, then City shall have the option, upon fifteen (15) days prior written notice to Wireless Provider, to perform or cause to be performed such reasonable and necessary work on behalf of Wireless Provider and to charge Wireless Provider for the actual and reasonable costs incurred by the City at City's standard rates.

42.2 Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior written notice to Wireless Provider, such reasonable and necessary work on behalf of Wireless Provider to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Wireless Provider of the repairs as soon as practicable after the work has begun. Wireless Provider agrees that any severed City-owned Conduit and/or fiber must be completely repaired or replaced to the nearest splice point. If the City needs to perform any part of the necessary repairs, relocation, and/or removal work, it shall be entitled to seek payment for such actual and reasonable repairs, relocation, and/or removal costs from Wireless Provider and may draw upon a performance bond and/or Deposit required by this Standard T's and C's in full or

partial satisfaction of such costs, if payment is not made by Wireless Provider as required by Section 42.3 below.

42.3 Upon the receipt of a demand for payment by City, Wireless Provider shall promptly reimburse City for such actual and reasonable costs. Failure to pay will entitle the City to draw upon the Deposit within thirty (30) days of the demand for payment to Wireless Provider.

42.4 For any pavement cuts by Wireless Provider, Wireless Provider agrees to restore the pavement and to reimburse the City for all actual and reasonable costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 29 of the Tempe City Code and the fees established by the City pursuant thereto. Wireless Provider agrees to pay within thirty (30) days from the date of issuance of an invoice from City. Failure to pay will entitle City to draw upon the Deposit and/or performance bond immediately.

#### **SECTION 43. Public Emergency Disruption by City**

City shall have the right, because of a Public Emergency, to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage any element of the Wireless Facilities of Wireless Provider without any prior notice to Wireless Provider, if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee. In such event, neither the City nor any agent, Contractor, or employee of City shall be liable to Wireless Provider, its Contractors, or its customers or their parties for any harm so caused to them or the Wireless Facilities. When practical and if possible, City will consult with Wireless Provider in advance by calling its Network Operations Center (NOC) 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 Wireless Facilities. City shall inform Wireless Provider of any actions taken. Excepting damages resulting from the City's or its agents' gross negligence or willful misconduct, Wireless Provider shall be responsible for repair at its sole expense of any of its Wireless Facilities damaged pursuant to any such action taken by City.

#### **SECTION 44. Public Safety/Public Hazard**

44.1 If any of Wireless Provider's Wireless Facilities or activities present any immediate hazard or dangerous condition to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety and/or other public health, safety and welfare functions, then if the action is deemed reasonably necessary by either the City Manager, Fire Chief, Police Chief, City Engineer, or Public Works Director or designee, City shall have the right to disable, alter, relocate, sever, disrupt, remove, tear out, dig-up, or otherwise damage Wireless Facilities of Wireless Provider. City shall inform Wireless Provider of any actions taken and Wireless Provider shall remove its equipment. Notwithstanding the above, before any such actions are taken, the City shall notify the Wireless Provider at its Network Operations Center to give notice of the Emergency or immediate hazard or dangerous condition.

44.2 In the event of an action taken by City under this section, neither the City nor any agent, Contractor, or employee of the City shall be liable to Wireless Provider or its Contractors or its customers or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, Contractors, or employees in responding to such public hazard or dangerous condition. When practical and if possible, City will consult with Wireless 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 either the

public property involved or the Wireless Facilities involved. Following notice from the City, Wireless Provider shall reasonably cooperate with the City, at no expense to City, to remedy the hazard and secure the route area.

44.3 **Emergencies.** The Parties shall notify each other of any Emergency related to the Pole(s) or Wireless Provider's SWFs or Monopoles.

44.3.1 In the event of an Emergency discovered by Wireless Provider, Wireless Provider shall immediately notify City at (480) 350-8311 of any Emergency related to the Pole(s) or Wireless Provider's SWF or Monopole. This Emergency phone number shall be kept updated and current between the Wireless Provider and the City on an as-needed basis.

44.3.2 In the event of an Emergency discovered by City, City shall immediately notify Wireless Provider at its Network Operations Center of any Emergency related to the Pole(s) or Wireless Provider's SWF or Monopole. This Emergency phone number shall be kept updated and current between the Parties on an as-needed basis.

#### **SECTION 45. Non-use/Abandonment of the Wireless Facilities**

45.1 An "Abandoned Wireless Facility" will mean a Wireless Facility no longer in service or physically disconnected from a portion of the operating Wireless Facility or from any other Wireless Facility that is in use or still carries service. If Wireless Provider ceases to provide services or abandons use of any of its Wireless Facilities, upon cancellation or termination of this Standard T's and C's, Wireless Provider shall notify the City and may, subject to written approval by the City Engineer or their designee, abandon the Wireless Facilities in place. In such event, the City, at its option, may acquire ownership of the Wireless Facilities at no cost to the City. In lieu of abandonment in place, the City may require Wireless Provider, to the reasonable satisfaction of the City and without cost or expense to the City, to promptly remove the Wireless Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the City.

45.2 Upon abandonment in place Wireless Provider shall submit to the City a proposal and instruments for transferring ownership to the City within thirty (30) days. Any such Wireless Facilities, which are not removed as required by the City within ninety (90) days of either such date of termination or cancellation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City. Wireless Provider will notify the Arizona Blue Stake Center to record the Wireless Facilities that have been abandoned. The City Engineer may extend the ninety (90) day time period for extenuating circumstances.

45.3 Title to any and all personal property installed by Wireless Provider upon the ROW that is not removed during the period set forth in this Section shall automatically vest in City.

#### **SECTION 46. Contractors**

46.1 Wireless Provider shall be responsible for ensuring that the work of Contractors is performed consistent with these Standard T's and C's and other applicable law, and shall be responsible for the acts, errors, omissions, and any negligence of their Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation, and any other activity involving Wireless Provider's Wireless Facilities to the same degree it is responsible for the acts of its employees. Wireless



Provider shall be responsible for promptly correcting acts or omissions by any Contractor and shall implement a quality control program to ensure that the work contemplated by these Standard T's and C's is performed.

46.2 The specific independent Contractors identified and used by Wireless Provider for the construction activities to expand and extend Wireless Provider's Wireless Facilities and Use Area will need to be approved by the City Engineer or designee prior to issuance of each Utility Permit, and such approval shall not be unreasonably withheld, delayed, conditioned, or denied. Wireless Provider may satisfy this Section 46 by providing a list of specific independent Contractor's for the City's pre-approval. Each Contractor shall have the same obligations with respect to its work as Wireless Provider would have if Wireless Provider performed the work. Any Contractors performing construction work within the ROW or public easements shall comply with licensing requirements of the Arizona General Contractors.

**Exhibit A– Form of Letter of Credit**

## Standards for Letters of Credit

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

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

1.1 The Letter of Credit is clean, unconditional, and irrevocable.

1.2 The Letter of Credit is payable to City upon presentation of the City's draft.

1.3 City may make partial draws upon the Letter of Credit. In that event, the issuer will return the original Letter of Credit to the City within ten (10) business days of payment.

1.4 The Letter of Credit is conditioned for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.

1.5 Within ten (10) 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 Letter of Credit Department of the issuer upon which the issuer may endorse its payments. Such presentation can be done via overnight courier.

1.6 The issuer specifies a fax number, email address and street address at which City may present drafts on the Letter of Credit as required by 1.5 above.

1.7 The Letter of Credit is valid until a specified date.

1.8 The Letter of Credit is the individual obligation of the issuer, in no way contingent upon reimbursement with respect thereto, or upon issuer's ability to perfect any lien or security interest.

1.9 The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration the issuer notifies City in writing, by either registered or certified mail or courier, 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. If necessary, replacement instruments can be prepared within the (ninety) 90 days prior to expiration.

1.10 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. Notwithstanding Article 36 of said Publication, in the event that one or more of the occurrences specified in Article 36 of said Publication occurs, then the bank hereby specifically agrees that this letter of credit shall be extended so as not to expire during such interruption of business and shall extend for ten days after such resumption of business.

1.11 The Letter of Credit need not be transferable.

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

2.1 Except as approved in writing by City's Chief Financial Officer or designee, form of the Letter of Credit shall be in the form set out below.

2.2 Except as approved in writing by City's Chief Financial Officer or designee, the form of drafts upon the Letter of Credit shall be in the form set out below.

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

3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona.

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

3.3 The issuer shall have a net worth of not less than \$500 million.



**FORM OF DRAFT ON LETTER OF CREDIT**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: Chief Financial Officer  
City of Tempe  
20 E. Sixth Street, 2<sup>nd</sup> Floor  
Tempe, Arizona 85281

Re: \_\_\_\_\_ [Company Name]  
Contract No. C201\_-\_\_ dated \_\_\_\_\_, 201\_

Date: \_\_\_\_\_, 20\_\_

Ladies and Gentlemen:

Pursuant to your Letter of Credit No. \_\_\_\_\_, the City of Tempe hereby demands cash payment in the amount of \_\_\_\_\_ (\$\_\_\_\_\_).

Please make your payment to the City of Tempe in the form of a wire deposit (and indicate the amount is coming from the letter of credit issued to \_\_\_\_\_ [Company Name] 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 Chief Financial Officer of the City of Tempe.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at 480-350-8504 so that I can correct it. Also, please immediately notify the City Attorney at 480-350-8227.

Thank you.

\_\_\_\_\_  
City of Tempe, Chief Financial Officer