

RESOLUTION NO. 11079

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, ARIZONA ADOPTING REVISED STANDARD TERMS AND CONDITIONS FOR ANTENNA RIGHT-OF-WAY LICENSE AGREEMENTS (ARLA'S) FOR WIRELESS COMMUNICATION FACILITIES LOCATED WITHIN THE PUBLIC RIGHTS-OF-WAYS.

WHEREAS, Article One, Section 3(F) of the Scottsdale City Charter grants to the City the exclusive control use and regulation of its streets, alleys, public grounds, and rights-of-way; and

WHEREAS, various providers of telecommunications desire permission from the City to install wireless communication facilities and associated equipment in the rights-of-way ("ROW"); and

WHEREAS, on January 23, 2018, the City Council adopted Resolution No. 11005 establishing standard terms and conditions for antenna right-of-way license agreements; and

WHEREAS, the City Council finds that it is in the best interests of the City to adopt revisions and modifications to the standard terms and conditions whereby City staff can continue to issue licenses that allow for such installation while protecting the City's interest in management and preservation of the ROW; and

NOW THEREFORE LET IT BE RESOLVED by the City Council of the City of Scottsdale, Arizona, as follows:

Section 1. The City Council adopts the revised standard terms and conditions set forth in **Exhibit "A"** attached hereto and incorporated into this resolution, revising the uniform method for the issuance of licenses for the installation of antennas in the City's right-of-way.

Section 2. The City Council hereby authorizes the City Manager or his designee to issue Antenna Right-of-Way License Agreements (ARLA's) for wireless communications facilities in the rights-of-way (ROW) in accordance with the standard terms and conditions set forth in **Exhibit "A"**.

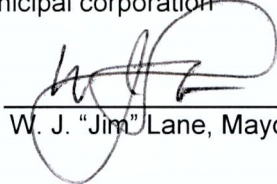
Section 3. The revised standard terms and conditions set forth in **Exhibit "A"** shall be effective for new ARLA's issued on or after April 24, 2018. However, the City Manager or his designee is authorized, with the consent of the Licensee, to substitute these revised terms and conditions for any ARLA issued on or after January 23, 2018.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 24th day of April, 2018.

CITY OF SCOTTSDALE, an Arizona municipal corporation

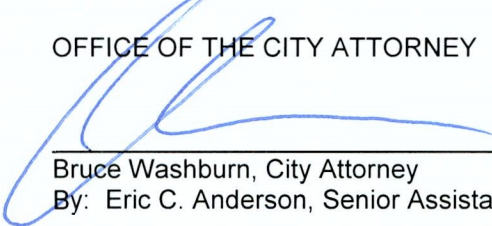
ATTEST:

By:   
Carolyn Jagger, City Clerk

By:   
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

  
Bruce Washburn, City Attorney  
By: Eric C. Anderson, Senior Assistant City Attorney

## NOTICE OF ANTENNA SITE STANDARD TERMS

THIS NOTICE OF ANTENNA SITE STANDARD TERMS (the "Notice") is made and entered into this 24th day of April, 2018, by the City of Scottsdale, an Arizona municipal corporation ("Licensor") and shall apply to any Antenna License in the City Right of Way issued after April 24, 2018.

### RECITALS

A. Licensor owns public street and alley rights-of-way and public utility easements within the boundaries of the City of Scottsdale that are designated for use by utility companies for installation, operation and repair of water, electrical and other utilities pursuant to franchises, licenses or other agreements between utility companies and Licensor (collectively the "Right-of-way").

B. Licensor anticipates that one or more wireless service providers may desire to locate antennas and immediately related equipment at various locations (the "Sites") within the Right-of-way.

C. This Notice does not authorize any antenna or related equipment. No antennas or related equipment shall be installed in the Right of way unless and until Licensor grants a separate Antenna Site License Notice (the "Site License"). This Notice merely provides contract language to be incorporated into Site Licenses.

D. The Standard Terms become effective as to each Site as they are incorporated into a Site License by reference. Except as otherwise stated each Site License stands on its own.

E. The purpose of this Notice is to:

- 1) Promote uniformity in the Site Licenses.
- 2) Streamline the preparation and administration of the Site Licenses.

NOW, THEREFORE, City gives notice of the Standard Recitals and Standard Terms attached hereto as **Schedule "1"**.

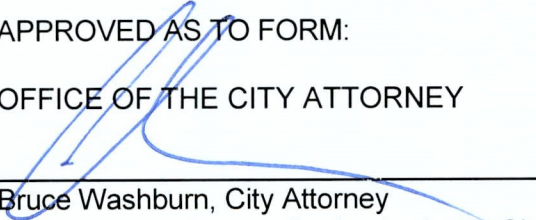
EXECUTED as of the date first given above.

LICENSOR: **CITY OF SCOTTSDALE,**  
an Arizona municipal corporation

By:   
Keith Niederer  
Telecommunications Policy Coordinator

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

  
Bruce Washburn, City Attorney  
By: Eric C. Anderson, Senior Assistant City Attorney

## STANDARD RECITALS AND STANDARD TERMS

### STANDARD RECITALS

A. There may be portions of the Right-of-way (the "Third Party Areas") upon which the Communications Equipment may not be built without permission (the "Third Party Permission") from one or more third parties (the "Third Parties"). The Third Party Areas are areas such as canal crossings or other areas that for any reason have limited Right-of-way dedications or that have regulatory use restrictions imposed by a Third Party.

B. Various laws (the "Telecommunications Laws") authorize Licensor to regulate its streets, alleys and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation and maintenance of telecommunications systems. The Telecommunications Laws may include, without limitation, the following:

- 1) Chapter 47 of the Scottsdale Revised Code entitled "Streets, Sidewalks and Public Works Generally" (the "Street Code").
- 2) The Scottsdale City Charter.
- 3) A.R.S. §§ 9-581 through 9-583 and 9-591 *et seq.*
- 4) The Constitution of the State of Arizona.
- 5) Other applicable federal, state and local laws, codes, rules and regulations.
- 6) Licensor's police powers, its authority over public right-of-way, and its other governmental powers and authority.

C. Licensor and Licensee may have entered into, and may yet enter into, other antenna site license agreements that incorporate by reference these very same identical Standard Recitals and Standard Terms (the "Related Identical Agreements").

### STANDARD TERMS

#### I. USE AREAS

1. Use Areas. Licensor grants to Licensee a license to use the Use Areas as follows:

1.1 Limitations. Notwithstanding anything in this Agreement to the contrary, the Use Areas include and are limited to only certain areas that Licensee is permitted to exclusively use and occupy (the "Exclusive Areas") and certain areas that Licensee is permitted to use on a shared basis (the "Shared Areas"). The Use Areas are defined by the Boundary Plan.

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

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

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

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

1.3.3 The area on the Pole defined as "Microwave Antenna" on the Boundary Plan to be used by Licensee solely for mounting the "Microwave Antennas". Such area is confined to the Licensor approved elevations and locations actually occupied by the "Microwave Antennas" and their supporting brackets. If the Boundary Plan does not show a clearly defined and correctly labeled "Microwave Antennas" area, then no microwave antennas area is available for Licensee's use under this Agreement and any microwave antennas for Licensee's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

1.3.4 The area defined as "Fixed Generator" on the Boundary Plan to be used by Licensee solely for an emergency backup electrical generator (the "Fixed Generator") for the Communications Equipment. If the Boundary Plan does not show a clearly defined and correctly labeled "Fixed Generator" area, then no fixed generators area is available for Licensee's use under this Agreement and any microwave antennas for Licensee's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

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

1.4.1 A motor vehicle Parking space (the "Parking Space") at the "Parking Space" location described on the Boundary Plan to be used by Licensee solely for parking a service vehicle (the "Temporary Generator") to service the Communications Equipment. If the Boundary Plan does not show a clearly defined and correctly labeled "Parking Space" area, then no parking space area is available for Licensee's use under this Agreement and any parking for Licensee's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement. Notwithstanding the preceding sentence, Licensee may use such parking spaces at or near the Street Parcel as Licensee may elect to make available to the public from time to time, on the same terms as Licensor makes such use available to the public.

1.4.2 The area defined as "Temporary Generator" on the Boundary Plan to be used by Licensee solely for temporarily parking a portable generator during an emergency (the "Temporary Generator") to service the Communications Equipment. If the Boundary Plan does not show a clearly defined and correctly labeled "Temporary Generator" area, then no Temporary Generator area is available for Licensee's use under this Agreement and any Temporary Generator must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

1.4.3 No temporary construction area is provided by this Agreement. Licensee must obtain from Licensor a separate written document giving Licensee permission to work in the right-of-way, as described elsewhere in this Agreement.

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

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

1.4.6 An underground cable route (the "Fixed Generator Electrical Route") labeled as the "Fixed Generator Electrical Route" described on the Boundary Plan from the Fixed Generator to the Enclosure to be used by Licensee solely for emergency electrical power for the Communications Equipment. If the Boundary Plan does not show a clearly defined and correctly labeled Fixed Generator Electrical Route area, then no fixed generator electrical route area is available for Licensee's use under this Agreement and any fixed generator electrical route for

Licensee's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

1.4.7 An underground or aboveground cable route (the "Temporary Generator Electrical Route") labeled as the "Temporary Generator Electrical Route" described on the Boundary Plan from the Temporary Generator to the Enclosure to be used by Licensee solely for the Temporary Generator. If the Boundary Plan does not show a clearly defined and correctly labeled Portable Generator Electrical Route area, then no portable generator electrical route area is available for Licensee's use under this Agreement and any portable generator electrical route for Licensee's use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

1.5 Power and Telephone Service. This Agreement does not grant permission for any portion of the power, telephone or other service routes, if any. (Use of the public street right-of-way or public utility easements for these purposes, if any, is governed by normal city right-of-way rules and policies and by any franchise or license between Licensor and the electrical and telephone service providers, and not by this Agreement.)

1.6 Acceptance. Licensee hereby accepts the Use Areas and this Agreement.

1.7 Rights in Adjacent Land. Licensee's rights are expressly limited to the real property defined as the "Use Areas" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property at or adjacent to the Use Areas is owned, dedicated, abandoned or otherwise acquired, used, improved or disposed of by Licensor, such property shall not accrue to this Agreement but shall be Licensor's only. In addition, and severable from the preceding sentence, upon any such event, Licensee shall upon Licensor's request execute and deliver to Licensor without compensation a disclaimer of such right-of-way or other property.

1.8 Variation in Area. In the event the Use Areas consist of more or less than any stated area, this Agreement shall nevertheless continue and Licensee's obligations hereunder shall not be increased or diminished.

1.9 Condition of Title. Licensee's rights hereunder are subject to covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded matters or conditions of title to or agreements or documents regarding the Use Areas and any and all existing or future agreements allowing any use of the Use Areas and all amendments to any such agreements (collectively the "Site Documents"). Licensee's rights to use the Use Areas under this Agreement are limited to a subset of the interests held by Licensor under the Site Documents. Licensee shall not violate the interests held by Licensor under the Site Documents. Licensee shall not have power to amend, modify, terminate or otherwise change the Site Documents or create new Site Documents.

1.9.1 Licensor does not warrant its own or any other person's title to or rights to use the Use Areas or any other property.

1.9.2 Licensee shall pay, indemnify, defend and hold harmless Licensor and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators'

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and experts' fees and court costs that arise from or relate to Licensee's non-compliance with the Site Documents.

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

1.11 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights herein are limited to use and occupation of the Use Areas for the Permitted Uses. Licensee's rights in the Use Areas are limited to the specific rights created by this Agreement.

1.12 Limited Rights in Use Areas. This Agreement grants Licensee no rights to or use of the Use Areas other than those expressly granted herein.

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

1.13.1 Competing Users. Water pipes, pavement, and other facilities may all be located within the same Segment of Right-of-way with portions of the Communications Equipment. Licensee accepts the risk that Licensor and others (the "Competing Users") may now or in the future install their facilities in the Use Areas in locations that make parts of the Right-of-way unavailable for Licensee's use. The Competing Users include without limitation Licensor, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the Use Areas.

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

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

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

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

1.13.2.4 All other uses of the Right-of-way that Licensor may permit from time to time.

1.13.3 Reserved Right. The Reserved Right includes the right to use and allow other Competing Users to conduct Competing Activities at any location upon the Use Areas. Provided, however, Licensor will make reasonable efforts to avoid allowing Competing Activities (other than those of Licensor itself) that materially interfere with Licensee's permitted use of the Use Areas unless Licensor is required to allow such Competing Activities under applicable law or Licensor's agreements with Competing Users.

1.13.4 Licensor's Rights Cumulative. All of Licensor's Reserved Rights under various provisions of this Agreement shall be cumulative to each other.

1.13.5 Use Priorities. This Agreement does not grant to Licensee or establish for Licensee any exclusive rights or priority in favor of Licensee to use the Use Areas. Licensee shall not obstruct or interfere with or prevent any Competing User from using the Use Areas.

1.13.6 Regulation. Licensor shall have full authority to regulate use of the Use Areas (unless otherwise prohibited by law) and to resolve competing demands and preferences regarding use of the Use Areas and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, Licensor may take any or all of the following into account in regulating use of the Use Areas:

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

1.13.6.2 All other factors Licensor may consider relevant, whether or not mentioned in this Agreement.

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

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

1.13.7.1 Licensee shall perform the Relocation Work at its own expense when required by Licensor's city manager or designee.

1.13.7.2 The Relocation Work includes all work determined by Licensor to be reasonably necessary to accommodate Competing Activities, including without limitation temporarily or permanently removing, protecting, supporting, disconnecting or relocating any portion of the Communications Equipment. In the event that Relocation Work is required,

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Licensor will work with Licensee to identify suitable Use Areas for Relocation and promptly process any required permitting therefore. If feasible, Licensor will also allow Licensee to utilize a temporary substitute facility for the Communications Equipment while the Relocation Work is being accomplished.

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

1.13.7.4 Licensor and not Licensee shall be entitled to use any of Licensee's facilities that are abandoned in place or that are not relocated on Licensor's request.

1.13.7.5 All Relocation Work shall be subject to and comply with all other provisions of this Agreement.

1.13.8 Disruption by Competing Users. Neither Licensor, its agents, nor employees shall be liable to Licensee, its customers or third parties for any service disruption or for any other harm caused them or the Communications Equipment due to Competing Users or Competing Activities.

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

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

1.14 Third Party Permission. Licensee's right to use any Use Areas shall be suspended, but not its obligations with respect thereto, during any period that a Third Party Permission is not in effect.

## II. TERM OF AGREEMENT

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2. Term of Agreement. The term of this Agreement is as follows:

2.1 Original Term. The original term of this Agreement shall be for a period of ten (10) years commencing on the date of this Agreement.

2.2 Extensions. The term of this Agreement (i.e. the Site License) may be extended as follows:

2.2.1 The term of this Agreement may be extended for three (3) additional five (5) year periods subject to consent by Licensor and Licensee, which either may withhold in its sole and absolute discretion.

2.2.2 Both Licensor and Licensee shall be deemed to have elected to extend unless Licensor or Licensee, respectively, gives notice to the contrary to the other at least ninety (90) days prior to the end of the original term or the current extension.

2.2.3 Provided, however, if this Agreement is for a Small Wireless Facility as defined in A.R.S. § 9-591, it will be automatically extended for an additional ten (10) year at the request of Licensee.

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

2.4 Licensor's Right to Cancel. Notwithstanding anything contained herein to the contrary, Licensor shall have the unconditional right, with or without cause, to terminate this Agreement for any reason whatsoever or for no reason upon one hundred eighty (180) days notice given at any time after the first one hundred eighty days (180) days. In the event that this Agreement is cancelled pursuant to this section, Licensor will work with Licensee to identify suitable Use Areas for Relocation and promptly process any required permitting therefore. Provided, however, the provisions of this section allowing termination without cause shall not apply if the then applicable law requires Licensor to provide a license term which is longer than the amount of time that has elapsed following the effective date of this Agreement.

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

### III. LICENSEE'S PAYMENTS

3. Licensee's Payments. Licensee shall make payments to Licensor as follows:

3.1 Use Fee Items. Licensee shall pay to Licensor each of the following separate and cumulative amounts (collectively the "Use Fee"):

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3.1.1 An annual amount (the "Base Use Fee").

3.1.2 An amount (the "Ordinary Permit Use Fee") based on Licensee's permit review and other costs as set out below.

3.1.3 An amount (the "Violation Use Fee") based on certain breaches by Licensee of this Agreement as set out below.

3.1.4 All other amounts required by this Agreement.

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

3.3 Ordinary Permit Use Fee Amount. The amount of the Ordinary Permit Use Fee shall be the total amount of all applicable ordinary fees payable to Licensor for Licensor's review of plans, issuance of permits, and inspection of Licensee's work upon the Use Areas (including, without limitation, encroachment permits) as set out in the then current fee schedule as it may be amended from time to time by Licensor's City Council.

3.4 Adjustments. Intentionally Omitted.

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

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

3.6.1 Licensee shall pay Base Use Fee and Ordinary Permit Use Fee at the times and in the amounts specified by Licensor's normal processes for Base Use Fee and Ordinary Permit Use Fee.

3.7 Use Fee Amount Report. Each installment of Use Fee other than Base Use Fee and Ordinary Permit Use Fee shall include a report showing the manner in which each component of the Use Fee was calculated. The report shall summarize the transactions giving rise to the License Use Fee.

3.8 Letter of Credit. Within thirty (30) days after the date of this Agreement, Licensee shall provide to Licensor a letter of credit as follows:

3.8.1 The amount of the letter of credit shall be One Thousand Dollars (\$1,000.00).

3.8.2 The letter of credit is an additional security deposit for Licensee's performance of all of its obligations under this Agreement.

3.8.3 The letter of credit shall meet the requirements listed on **Exhibit "B"** attached hereto.

3.8.4 Licensee shall provide and maintain the letter of credit during the entire term of this Agreement as follows:

3.8.4.1 No later than thirty (30) days before a letter of credit is required, Licensee shall give Licensor notice containing a copy of the proposed form of letter of credit, along with a copy to Licensor's financial services general manager.

3.8.4.2 Licensee shall cause the original letter of credit to be delivered to Licensor's financial services general manager.

3.8.4.3 Licensee shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.

3.8.4.4 Within ten (10) business days after Licensor gives Licensee notice that Licensor has drawn on the letter of credit, Licensee shall cause the letter of credit to be replenished to its prior amount.

3.8.5 Licensor may draw on the letter of credit upon any Event of Default, and in the following circumstances whether or not they are an Event of Default:

3.8.5.1 Licensee fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this agreement.

3.8.5.2 Licensee fails to make monetary payments required under this Agreement.

3.8.5.3 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

3.8.6 Licensor shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

3.8.7 If the amounts that Licensor draws under the letter of credit exceed the total amounts that are then due from Licensee to Licensor under this Agreement, then Licensor shall hold and apply such excess amounts as a cash security deposit under this Agreement. If Licensee thereafter provides a letter of credit that satisfies the requirements of this Agreement, then Licensor shall release to Licensee any such excess amounts, net of any amounts that may then be due to Licensor.

3.8.8 If there are Related Identical Agreements, then the following shall apply:

3.8.8.1 All letters of credit that Licensee provides to Licensor under any Related Identical Agreements shall be deemed to have been provided to Licensor under all Related Identical Agreements and shall also secure any other agreements that may exist from time-to-time between Licensor and Licensee.

3.8.8.2 In addition to the letters of credit Licensee provides to Licensor under the Identical Related Agreements, all letters of credit that Licensee provides to Licensor under any other agreement that may exist between Licensor and Licensee from time-to-time shall also secure Licensee's performances under the Related Identical Agreements.

3.8.8.3 For purposes of this paragraph, the Related Identical Agreements include this Agreement.

3.8.8.4 The total amount of all letters of credit that Licensee provides to Licensor under this paragraph of the Related Identical Agreements shall be One Thousand Dollars (\$1,000.00) per Related Identical Agreement. If the total amount under the preceding sentence exceeds Ten Thousand Dollars (\$10,000.00) (the "Bond Threshold") then Licensee may elect to provide a letter of credit in the amount of the Bond Threshold together with a bond as follows:

3.8.8.4.1 If elected, the bond shall be in the amount by which the total amount of the letters of credit required exceeds the Bond Threshold.

3.8.8.4.2 For example, if Licensee and Licensor enter into two hundred (200) Related Identical Agreements, then Licensee shall provide to Licensor a letter of credit in the minimum amount of Ten Thousand Dollars (\$10,000) together with a bond in the amount of Two Hundred Thousand Dollars subtracted by the amount of the letter of credit provided by Licensee (all in addition to any letter of credit Licensee provides to Licensor under any other agreements that may exist between Licensor and Licensee from time-to-time).

3.8.8.4.3 The bond shall be provided by an issuer satisfactory to Licensor, and shall comply with Licensor's standards, policies and procedures. Unless Licensor approves otherwise, the bond shall be in the form attached hereto as **Exhibit 'D'**.

3.8.8.5 Licensee may elect to provide letters of credit in excess of the amounts required by this paragraph, in which case the excess amount of the letter of credit shall count toward the letters of credit for subsequent Related Identical Agreements. For example, if Licensee provides a Ten Thousand Dollar (\$10,000) letter of credit with the first Related Identical Agreement, then such letter of credit would satisfy the letter of credit requirement for the second Related Identical Agreement through the tenth Related Identical Agreement.

3.9 Late Fees. Use Fee is deemed paid only when Licensor actually receives good cash payment. Should any Use Fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100). Furthermore, any Use Fee that is not timely paid shall accrue simple interest at the rate of one and one-half percent (1 ½ %) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent fair and reasonable estimates by Licensor and Licensee of Licensor's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of Use Fee. Licensor shall have the right to allocate payments received from Licensee among Licensee's obligations.

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

#### IV. USE RESTRICTIONS

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

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

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

4.3 Use of Generators. Electrical generators are not allowed at the Use Areas except for the Fixed Generator or the Temporary Generator, if permitted by this Agreement. Generators must be equipped with well maintained mufflers. Exercising a Fixed Generator must be confined to not more than a single session of one (1) hour or less each calendar month between the hours of 9:00 a.m. to 6:00 p.m. on a day that is not a weekend or holiday. A Portable Generator must not be exercised.

4.4 Motor Vehicle Fueling. No motor vehicle or other fueling of any description shall occur at the Use Areas except for dispensing of nominal amounts of gasoline, diesel fuel or other ordinary fuels or lubricants necessary for use in motor vehicles, ordinary construction machinery and emergency backup generators permitted upon the Use Areas (the "Minimal Fueling"). Such materials must be properly and lawfully contained in small quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or in small portable tanks that are being used for the Minimal Fueling.

4.5 Communications Operations Restriction. Licensee shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of Licensor'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, Licensee shall immediately discontinue using the equipment, methodology or technology that causes the interference until Licensee takes corrective measures to alter the Communications Equipment to eliminate such interference. Any such corrective measures shall be made at no cost to Licensor. Licensee shall give to Licensor notice containing a list of the radio frequencies Licensee is using at the Use Areas and shall give notice to Licensor of any change in frequencies.

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



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

4.7.1 Licensee shall install and thereafter maintain the following signs and other markings as reasonably determined by Licensor from time to time:

4.7.1.1 All signs and markings required for safe use of the Use Areas by Licensor, Licensee and other persons who may be at the Use Areas at any time for any reason.

4.7.1.2 Any signage Licensor may request directing parking, deliveries and other vehicles and other users to comply with this Agreement.

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

4.7.2 All signage not expressly allowed by this Agreement is prohibited.

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

4.7.4 Licensee shall not erect, install, apply for a permit for, or display any sign until Licensee has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs to Licensor, and has received notice of Licensor's approval of the sign. Licensee signs shall be subject to the same plans review and other requirements that apply to other construction work by Licensee under this Agreement.

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

4.7.6 Licensee shall bear all costs pertaining to the erection, installation, operation, maintenance, replacement and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits regardless of the reason for any such activity, even if such activity is required by Licensor pursuant to this Agreement.

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

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

4.9 Suspended Operation. Licensee shall temporarily suspend operation of the Communications Equipment from time-to-time to accommodate safe use, maintenance, repair and other lawful activity at the Street Parcel (such as workers climbing the Pole past the Antennas to repair lighting mounted higher on the Pole). Except in emergencies, the following shall apply:

4.9.1 Such suspension will be for a period of not more than two (2) weeks.

4.9.2 Licensor shall give Licensee's network operations center at least two (2) hour telephonic notice before any suspension lasting two (2) hours or shorter. If feasible, Licensor shall provide to Licensee not less than twenty-one (21) days advance notice of work that would require a longer suspension.

4.9.3 If Licensee requests, Licensor shall meet with Licensee's representatives in advance to discuss the work and the suspension.

4.9.4 During a suspension period, Licensee may request that Licensor issue licenses for portable antenna sites according to Licensor's then existing policies generally applicable to all antenna operators for portable antenna sites.

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

4.11 Governmental Relations. Licensee shall conduct its activities in coordination with Licensor as necessary to maintain good relations with all Third Parties and all governmental entities having jurisdiction over the Use Areas, all other occupants of the Use Areas, and the occupants of surrounding real property (none of whom are third party beneficiaries to this Agreement). Licensee shall immediately give to Licensor notice of any actual or threatened dispute, violation or other disagreement relating to the Use Areas. Licensee is not an agent for Licensor. Such governmental entities include, without limitation, the following:

4.11.1 State of Arizona

4.11.2 Maricopa County

4.11.3 Bureau of Reclamation

4.11.4 Central Arizona Water Conservation District

4.11.5 Pole Owner

4.11.6 Federal Aviation Administration.

4.12 Limited Access. It is Licensee's and not Licensor's responsibility to keep unauthorized persons from accessing the Communications Equipment and the Exclusive Areas.

4.13 Standards of Service. Licensee shall keep the Use Areas attractively maintained, orderly, clean, neat and tidy at all times. Licensee shall not allow any person or persons in or about

the Use Areas related to Licensee's operations who shall fail to be clean, courteous, efficient and neat in appearance.

4.14 Licensee's Agent. Licensee shall at all times retain on call available to Licensor by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Communications Equipment and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the day-to-day operation of the Right-of-way and all other matters affecting this Agreement. Licensee shall also provide notice to Licensor of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Licensee's affairs and emergencies at the Right-of-way. Unless and until Licensee gives notice to Licensor of a new representative, Licensee's representative shall be the staff of Licensee's network operations center. The current telephone number of Licensee's network operations center is (\_\_\_\_)\_\_\_\_-\_\_\_\_. Any change shall be given in writing hand-delivered to Licensor's contract administrator for this Agreement as well as in the manner stated for notices under this Agreement.

4.15 Coordination Meetings. Licensee shall meet with Licensor and other Right-of-way users from time to time as requested by Licensor to coordinate and plan construction on the Use Areas and all matters affected by this Agreement.

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

4.16.1 Licensee shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Use Areas. The prohibitions of the preceding sentence only shall not apply to:

4.16.1.1 Properly and lawfully maintained gel-cell batteries providing back-up power to the Communications Equipment.

4.16.1.2 The Minimal Fueling.

4.16.2 Licensee shall dispose of any Toxic Substances away from the Use Areas as required by law and as reasonably required by Licensor.

4.16.3 Licensee shall not use the Use Areas in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency. The preceding sentence does not prohibit ordinary permits required for routine dust control measures.

4.16.4 In addition to and without limitation of any other indemnities or obligations, Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability

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incurred by reason of any Toxic Substance on or affecting the Right-of-way Use Areas attributable to or caused by Licensee or anyone using the Right-of-way under this Agreement.

4.16.5 . Licensee is not responsible for Toxic Substances that may exist at the Right-of-way if Licensee, Licensee's contractors, and other persons using the Right-of-way under this Agreement did not do any of the following:

4.16.5.1 Participate in transporting the Toxic Material to the Right-of-way.

4.16.5.2 Fail to promptly report the Toxic Material to Licensor as required below.

4.16.5.3 Participate in spreading or otherwise disturbing the Toxic Material.

4.16.5.4 Exacerbate the effects of the Toxic Material or the difficulty or cost of dealing with the Toxic Material.

4.16.6 Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensor has made no warranties as to whether the Use Areas contain actual or presumed asbestos or other Toxic Substances.

4.16.7 Within a reasonable time after discovery by Licensee of any Toxic Substances but in any event no later than seventy-two (72) hours, Licensee shall report such Toxic Substances to Licensor in writing. If any of the events listed in 4.16.5.1, 4.16.5.3 or 4.16.5.4 occur, Licensee shall provide Licensor with a written report of the nature and extent of such occurrences within fourteen (14) days thereafter.

4.17 Required Operation. During the entire term of this Agreement and any renewals or extensions, Licensee shall actively operate the Communications Equipment for the Permitted Uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be effective commencing on the earlier of completion of the Project or the Completion Deadline and shall continue through the date this Agreement terminates or expires for any reason. In the event of relocation of the Communications Equipment or damage to the Use Areas severe enough that the Communications Equipment cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during the time specified by this Agreement for accomplishing repair of such damage to relocation of the Communications Equipment. Licensee may temporarily cease operating the Communications Equipment for periods necessary to test, repair, service or upgrade the Communications Equipment.

4.18 Actions by Others. Licensee shall be responsible to ensure compliance with this Agreement by all persons using the Right-of-way through or under Licensee or this Agreement.

V. IMPROVEMENTS BY LICENSOR

5. Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements or perform any other construction work at the Use Areas or Right-of-way.

VI. LICENSEE'S IMPROVEMENTS GENERALLY

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

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

6.2 Zoning and Similar Approval Process. Unless exempted by law, the zoning processes, building permit processes, right-of-way management policies and similar regulatory requirements that may apply to Licensee's Improvements are completely separate from the plans approval processes under this Agreement. Licensee's satisfaction of any requirement of this Agreement does not substitute for compliance with any regulatory requirement. Licensee's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of this Agreement. Licensee must make all submittals and communications regarding the requirements of this Agreement through Licensor's contract administrator for this Agreement and not through planning, zoning, building safety or other staff. Licensee shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Licensee bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph, to the extent regulatory requirements and requirements of this Agreement are identical, compliance with regulatory requirements shall constitute compliance with this Agreement and vice versa.

6.3 Relationship of Plans Approval to Regulatory Processes. Licensee's submission of plans under this Agreement, Licensor's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THIS AGREEMENT. Provided, however, nothing in this Agreement shall be construed as requiring Licensor to complete a zoning process for a Small Wireless Facility that is exempt from zoning processes as set forth in A.R.S. § 9-591 *et seq.*

6.4 Contract Administrators. Upon execution of this Agreement, Licensor and Licensee shall each designate a contract administrator to coordinate the respective party's

participation in designing and constructing the Project. Each contract administrator shall devote such time and effort to the Project as may be necessary for timely and convenient coordination among the parties and their representatives involved with the Project and compliance with this Agreement. Licensor's contract administrator will not be exclusively assigned to this Agreement or the Licensee's Improvements.

6.5 Licensor's Contract Administrator. Licensor's contract administrator's authority with respect to the Use Areas is limited to the administration of the requirements of this Agreement. No approval, consent or direction by Licensor's contract administrator or other persons affiliated with Licensor inconsistent with this Agreement shall be binding upon Licensor. Licensee shall be responsible for securing all zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Project and shall not rely on Licensor or Licensor's contract administrator for any of the same.

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

6.7 Design Requirements. All Licensee's Improvements shall comply with the following design requirements:

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

6.7.2 Any changes to utility facilities shall be strictly limited to the Use Areas, shall not affect utilities used by Licensor, and shall be undertaken by Licensee at its sole cost and expense.

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

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

6.8 Approval Required. Licensee shall not construct any Licensee's Improvements (including work on adjacent public lands, if applicable) without having first received written plans approval from Licensor. Such consent requirement shall apply to all improvements, furnishings, equipment, fixtures, paint, wall treatments, utilities of every description, communications cabling and other construction work of any description as described in all plans heretofore or hereafter delivered by Licensee to Licensor. Such consent requirement does not apply to work to the

Communications Equipment confined completely inside the Enclosure and not visible, audible, or otherwise discernible outside the Enclosure.

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

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

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

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

6.10.3 Final Plans.

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

6.11.1 All plans Licensee submits under this Agreement shall show design, appearance, capacity, views, and other information reasonably deemed necessary by Licensor for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by Licensor for the level of plans required by this Agreement.

6.11.2 Licensee shall deliver all plans submissions for non-regulatory approvals under this Agreement directly to Licensor's contract administrator and shall clearly label the submissions to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Licensee for Licensor's review shall include two (2) complete sets of the plans on paper and, if requested, two (2) copies of the plans in electronic form.

6.11.3 All plans delivered to Licensor in electronic form shall include vector line drawings of the improvements and such other information as this Agreement requires, all in a machine readable and manipulable form. The format of such data and the media upon which such data is supplied shall be such then reasonably common data format and media as specified from time to time by Licensor.

6.11.4 Licensee shall coordinate with Licensor as necessary on significant design issues prior to preparing plans to be submitted.

6.11.5 In addition to other submissions required under this Agreement, Licensee shall simultaneously deliver to Licensor's contract administrator copies of all applications and approvals and supplemental, supporting and related materials for all zoning, development review, building permits, and similar processes for the Licensee's Improvements.

6.11.6 No plans shall be deemed approved by Licensor until Licensor or contract administrator stamps them "APPROVED ONLY FOR PURPOSES OF THE PLANS APPROVAL REQUIREMENTS OF ARTICLE SIX OF ANTENNA SITE LICENSE AGREEMENT and Licensor's contract administrator initials and dates the stamp (collectively "Stamped").

6.11.7 All sets of engineering plans for Licensee's Improvements shall bear these words: "The engineer is performing all work on this project for the benefit and reliance of the City of Scottsdale and assures the City of Scottsdale that the work complies with any engineering requirements set out in the Antenna Site License Agreement."

6.11.8 All construction plans shall be prepared by qualified registered engineers acceptable to Licensor.

6.11.9 All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto.

6.11.10 Unless otherwise prohibited by law and if applicable under the City Code, Licensor has the right to require Licensee to obtain approval for any Licensee Improvements from the City of Scottsdale Development Review Board and any similar governmental body.

6.11.11 Licensee shall hand deliver all plans to Licensor no later than each submission date. Submission dates shall be such dates as are necessary for Licensee to timely obtain the approvals required by this Agreement. Licensee is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.11.12 Within thirty (30) days after Licensor receives plans from Licensee, Licensor shall make available to Licensee one (1) copy of the plans Licensee submitted either Stamped or marked to indicate the reasons that Licensor does not approve the plans.

6.11.13 If changes are required, Licensee shall revise the plans incorporating the changes requested by Licensor and shall within thirty (30) days after Licensor returns the marked up plans to Licensee submit revised plans to Licensor. Within twenty-one (21) days after Licensor's



receipt of the revised plans, Licensor shall make available to Licensee one (1) copy of the revised plans either Stamped or marked to indicate the reasons that Licensor does not approve the plans.

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

6.11.15 Within ninety (90) days after completion of any construction, Licensee shall deliver to Licensor's contract administrator a complete set of as-built plans showing that the construction was completed according to the approved plans.

6.11.16 Licensee shall provide to Licensor copies of any and all designs or plans for improvements upon the Use Areas for Licensor's unrestricted use at the Use Areas or elsewhere.

6.11.17 All Licensee's Improvements shall comply with all requirements of law, any applicable insurance contracts and this Agreement.

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

6.13 Design and Construction Professionals. All construction and plans preparation for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Licensee. All of Licensee's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

6.14 Improvement Quality. Any and all work performed on the Use Areas by Licensee shall be performed in a workman-like manner meeting or exceeding the best practices of similar facilities in Maricopa County, Arizona, and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Licensee's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Licensor through the plans approval processes described in this Agreement in addition to any

zoning, building code or other regulatory processes that may apply. Licensee's Improvements shall not be deemed complete until so certified in writing to Licensor by the architect or engineer who designed the Licensee's Improvements.

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

6.16 Damage During Work. Upon performing any work upon the Right-of-way, Licensee shall simultaneously restore the Right-of-way to its prior condition, as directed by Licensor and repair any holes, mounting surfaces or other damage whatsoever to the Right-of-way. Such work shall include revegetation and appropriate irrigation systems for revegetated areas.

6.17 Replacement Pole. If Licensor approves a Licensee proposal to install Antennas on a Licensor owned pole, then in addition to the other requirements of this Agreement the following shall apply:

6.17.1 Licensee shall provide and deliver to Licensor a replacement pole (excluding mast arms) so that a replacement is immediately available to Licensor in case the original pole is damaged.

6.17.2 If there are Related Identical Agreements, then Licensor may elect from time to time to use replacement poles that Licensee provides under any of the Related Identical Agreements, instead of requiring Licensee to provide an additional replacement pole under this Agreement. If the same model of pole is used under multiple Related Identical Agreements, then Licensor shall not require that Licensee provide Licensor more than three (3) replacement poles of that model pole.

6.17.3 If Licensor uses a replacement pole, then Licensee shall provide another replacement pole.

6.17.4 All performance under this paragraph shall be at Licensee's expense. Licensor owns the original pole and all replacement poles.

6.17.5 This paragraph does not diminish the plans approval or any other requirement of this Agreement.

6.18 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Licensee shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Licensee shall cause the contractor or other person performing such work on behalf of Licensee to give to Licensor notice by the method described in this Agreement to the effect that the person will inspect for Toxic Substances, will not disturb Toxic Substances, and will indemnify, defend and hold Licensor harmless against any disturbance in Toxic Substances in the course of the contractor's or other person's work. Licensee shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Licensee in connection with the Use Areas to be performed by persons, equipment, facilities and other

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resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Licensee shall promptly deliver to Licensor copies of all reports or other information regarding Toxic Substances.

6.19 Coordination with Encroachment Permit. The Street Parcel is located in Licensor's public street right-of-way. This Agreement serves as an encroachment permit under Chapter 47 of the Scottsdale Revised Code to the extent of allowing Licensee's Improvements to exist upon the Street Parcel. Licensee shall not be required to obtain any further encroachment permit or pay any additional encroachment permit fee for the project for that narrow purpose. However, Licensee shall obtain additional encroachment permits at Licensee's expense as follows:

6.19.1 Licensee shall perform no construction work in the right-of-way without obtaining through normal processes from Licensor a permit giving permission to work in the right-of-way.

6.19.2 Licensee shall not alter or perform any work to Licensor's improvements without first obtaining through normal process from Licensor a permit giving permission to alter Licensor's improvements.

6.19.3 Licensee shall not in any way obstruct pedestrian or vehicular traffic within the right-of-way without first obtaining through normal processes from Licensor a permit giving permission to obstruct traffic.

6.19.4 Licensee shall apply for such encroachment permits and pay encroachment permit fees "over the counter" pursuant to normal encroachment permit processes.

6.20 Time for Completion. Licensee shall diligently and expeditiously pursue to completion the construction of all approved Licensee's Improvements. Licensee shall complete initial construction of the Project no later than the Completion Deadline. Licensee shall complete construction of all of other Licensee's Improvements no later than the earlier of i) two (2) months after the date of plans approval, or ii) any earlier date required by this Agreement.

6.21 Other Requirements. All Licensee's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents and this Agreement.

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

6.23 Work Time and Manner Restrictions. All installation, construction, maintenance, inspection, repair and other work of any kind shall be done in a manner that does not disrupt traffic (except in compliance with appropriate permits) or nearby land uses. Without limitation, such work shall be done in compliance with applicable Licensor policies and directions from time to time, taking into account the various sensitivities of traffic, tourism, events, adjoining land uses, other Right-of-way uses, and all other needs and concerns that are likely to be affected by Licensee's work.

6.24 Work Classifications. All Licensee's Improvements and other construction, repair, maintenance and other work (collectively "Work") shall be divided into three categories ("Heavy Work", "Medium Work" and "Light Work"):

6.24.1 Heavy Work is any work that involves any of the following:

6.24.1.1 Complete blockage of a sidewalk or trail.

6.24.1.2 Any Work or construction signage closer to the center of a street than the edge of pavement or back of curb.

6.24.1.3 Any Work that involves workers or equipment within thirty (30) feet of an intersection measured from the closest edge of pavement or back of curb.

6.24.1.4 Any Work that does or is projected to take more than seven (7) days to complete.

6.24.1.5 Any Work that involves excavating more than five (5) cubic yards of dirt, digging more than three hundred (300) feet of trench, or any boring (other than by a hand held auger or other hand held equipment).

6.24.1.6 Any Work that involves any traffic breaks, diversions or interruptions, any temporary or permanent alteration of traffic signals or signs or other traffic control devices, or any rerouting of any traffic.

6.24.2 Medium Work is all Work that is not Heavy Work but involves workers or equipment being used or located within ten (10) feet of any portion of any public street right-of-way designated for vehicular travel, within one hundred (100) feet of the nearest part of any intersection measured from the closest edge of pavement or back of curb, or upon or interfering in any way with any sidewalk, path or trail.

6.24.3 Light work is Work that is not Medium Work or Heavy Work.

6.25 Street Classifications. All Right-of-Way shall be divided into three categories ("Critical Streets", "Large Streets", and "Small Streets") as follows:

6.25.1 Critical Streets are all of the Scottsdale Road, Hayden Road, Pima Road and Shea Boulevard Right-of-way and all Right-of-way within one hundred (100) feet of the Right-of-way of any of these roads. During January and February, Critical Streets also include Frank Lloyd Wright Boulevard, Bell Road, Princess Drive and Perimeter Center Drive. Critical Streets are only the streets named in this paragraph and do not include other streets encircled by or near the Critical Streets.

6.25.2 Large Streets are all streets shown on Scottsdale's General Plan as Major Arterials, Minor Arterials or Collectors.

6.25.3 Small Streets are all Route Right-of-Way that is not Critical Streets or Large Streets.

6.26 Light Work Restrictions. All Light Work shall comply with the following:

6.26.1 Licensee shall obtain all permits.

6.26.2 Except with Licensor's contract administrator's advance written consent, Licensee shall not perform Light Work to Critical Streets during the hours of 6 a.m. to 9 a.m. or 4 p.m. to 7 p.m. Monday through Friday (collectively "Rush Hours").

6.27 Medium Work Restrictions. All Medium Work shall comply with all of the restrictions applicable to Light Work and also with the following:

6.27.1 Licensee shall give Licensor ten (10) days advance notice of any Medium Work.

6.27.2 Except with Licensor's contract administrator's advance written consent, Licensee shall not perform Medium Work to Critical Streets or Large Streets during Rush Hours.

6.27.3 Licensee's giving notice under this paragraph is not a substitute for obtaining Licensor's approval of the proposed work.

6.28 Heavy Work Restrictions. All Heavy Work shall comply with all of the restrictions applicable to Medium Work and Light Work and also with the following:

6.28.1 Except with Licensor's contract administrator's advance written consent, Heavy Work is prohibited on Critical Streets during the period from November 15 to April 30.

6.28.2 Licensee shall give Licensor ten (10) days advance notice of any Heavy Work.

6.28.3 Licensee's giving notice under this paragraph is not a substitute for obtaining Licensor's approval of the proposed work.

6.29 Work Restriction Waivers. Licensor's contract administrator shall have authority but not an obligation to grant written exceptions to the provisions of this Agreement that limit the days or times during which Licensee may conduct Work. If Licensor declines to issue an exception or fails to respond within five (5) business days to a request for an exception, Licensee may give notice that Licensee appeals to the city manager who shall render a decision within five (5) business days after Licensee gives the notice.

## VII. LICENSEE'S INITIAL PROJECT CONSTRUCTION

7. Licensee's Initial Project Construction. Licensee shall complete construction of the Project in accordance with all requirements of this Agreement, including without limitation those governing Licensee's Improvements, and the following:

7.1 Initial Plans Approved. By entering into this Agreement, Licensor approves only for purposes of Licensee's initial Project construction under this Agreement the design of Licensee's Improvements comprising the Project to the extent set forth in the Site Plan. To that

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extent, said approval partially satisfies the requirement under this Agreement that Licensee obtain Licensor's approval of plans. However, changes, modifications, refinements and particular implementations of any proposed Licensee's Improvements and all other matters not shown on the Site Plan are subject to this Agreement's requirement that Licensee obtain Licensor's approval for all Licensee's Improvements.

7.2 Project Definition. As of the date of this Agreement, the Project is only designed to the extent depicted in the Site Plan. Unless Licensor gives notice of consent otherwise, the Project shall conform to the Site Plan and to all other requirements of this Agreement.

7.3 Project Construction Schedule. Licensee shall design and construct the entire Project according to the following schedule:

7.3.1 Licensee shall obtain Licensor's approval of conceptual plans for the entire Project no later than ninety (90) days prior to the Completion Deadline.

7.3.2 Licensee shall obtain Licensor's approval of preliminary plans for the entire Project no later than sixty (60) days prior to the Completion Deadline.

7.3.3 Licensee shall commence constructing the entire Project thirty (30) days prior to the Completion Deadline.

7.3.4 Licensee shall complete and commence operating the entire Project no later than the Completion Deadline.

## VIII. MAINTENANCE AND UTILITIES

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

8.1 Maintenance by Licensor. Licensor has no maintenance or repair obligations for the Communications Equipment or other Licensee's Improvements.

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

8.3 Utility Service. Licensee shall contract for and pay all charges, fees, deposits and other amounts for electricity and telephone and other data communication service to the Use Areas at the rates applicable thereto. Licensee shall use no other utilities at the Use Areas (except that natural gas service is allowed for a permitted emergency backup generator).

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

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8.5 Right of Inspection. Licensor shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms of this Agreement, the Street Code, or other Telecommunications Laws. All Licensor plans reviews, inspections, standards and other rights and actions with relation to Licensee's Improvements are for Licensor's sole and exclusive benefit and neither Licensee nor any other person shall rely thereon or have any rights related thereto. The preceding sentence does not prevent Licensee from relying on consents, permits or approvals Licensor may grant based on Licensor's plans, reviews, and inspections.

8.6 Identification. All Licensee employees, contractors and subcontractors shall wear on their clothing a clearly visible identification card bearing their name and photograph and either Licensee's logo or name or the logo or name of the applicable subcontractor. Licensee shall account for all Licensee issued identification cards at all times. Every service vehicle of Licensee, its contractors or subcontractors shall be clearly identified as such to the public. Licensee vehicles shall have Licensee's logo plainly visible. Vehicles of contractors and subcontractors working for Licensee shall have the contractor's/subcontractor's name plus markings (such as magnetic door signs) indicating they are under contract to Licensee.

8.7 Construction Notification. Licensor may establish requirements for Licensee to notify nearby residents prior to construction.

8.8 Maintenance by Licensee. Licensee shall at all times repair and maintain its equipment at the Use Areas at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding best industry practices of maintenance of comparable facilities in Maricopa County, Arizona.

8.9 Blue Stake. Licensee shall register with and comply with the local Blue Stake program.

IX. BREACH BY LICENSEE

9. Breach by Licensee. Licensee shall comply with, perform and do each performance and thing required of Licensee herein and shall cause all persons using the Use Areas through or under Licensee or this Agreement to do the same. Licensee's failure to do so shall be a material breach by Licensee of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Licensee of Licensee's material obligations under this Agreement:

9.1.1 If Licensee shall be in arrears in the payment of Use Fee and shall not cure such arrearage within fifteen (15) days after Licensor has notified Licensee of such arrearage.

9.1.2 If Licensee shall fail to operate the Communications Equipment (except during specific periods expressly excused by this Agreement) for a period of ten (10) consecutive days or a total of twenty-five (25) days within any twelve (12) month period.

9.1.3 If Licensee shall fail to maintain any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be a default if within ten (10) business days after notice from Licensor, Licensee provides to Licensor the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this Agreement.

9.1.4 If a Pole Right-of-way Agreement, Pole Antenna Agreement or Supplemental Parcel Agreement shall expire or be terminated for any reason.

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

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

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

9.1.8 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the Right-of-way or timely pay any taxes pertaining to the Right-of-way and shall not cure such failure within thirty (30) days.

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

9.1.10 If Licensee shall fail to meet its obligations under the Safety Paragraph.

9.1.11 If Licensee shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein. After Licensor has once given notice of any failure by Licensee to comply with any provision of this Agreement, the following shall constitute a repeated failure by Licensee to comply with such provision:



9.1.11.1 Another failure to comply with any provision of this Agreement during the following thirty (30) day period.

9.1.11.2 Three (3) or more failures to comply with any provision of this Agreement during any ninety (90) day period.

9.1.11.3 Six (6) or more failures to comply with any provision of this Agreement during any twelve (12) month period.

9.1.12 If Licensee shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of such failure or neglect.

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

9.2.1 Terminate this Agreement. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Licensee's liability related to any breach of this Agreement.

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

9.2.3 Abate at Licensee's expense any violation of this Agreement.

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

9.2.5 Suspend Licensor's performance of this Agreement while an Event of Default exists.

9.2.6 Unless Licensor terminates this Agreement, insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all amounts as they come due during the entire remaining term of this Agreement.

9.2.7 Require an additional security deposit adequate in Licensor's sole discretion to protect Licensor and the Right-of-way.

9.2.8 Assert, exercise or otherwise pursue at Licensee's expense any and all other rights or remedies, legal or equitable, to which Licensor may be entitled, subject only to the

limitation set out below on Licensor's ability to collect money damages in light of the Violation Use Fee.

9.3 Violation Use Fee. In lieu of certain money damages (the "Inconvenience Costs") set out below, the following shall apply to Licensee's violation of certain limited requirements of this Agreement ( the "Violation Fee Provisions"):

9.3.1 The Inconvenience Costs are the money damages that Licensor suffers in the form of administrative cost and inconvenience, disharmony among Competing Users, and general inconvenience in Right-of-way use by Licensor, Competing Users and the public when Licensee fails to comply with the Violation Fee Provisions.

9.3.2 Licensee's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that, in lieu of Licensee paying to Licensor as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Licensee shall pay Violation Use Fee.

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

9.3.4 Licensee may elect to draw upon the letter of credit to collect the Violation Use Fee.

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

9.3.5.1 The amount of One Hundred Dollars (\$100.00) per day for Licensee's failure to properly restore the public right-of-way or to correct related violations of specifications, code, ordinance or standards within fifteen (15) business days after Licensor's notice to correct such defects. Such Violation Use Fee shall be in addition to any cost the Licensor may incur to restore the right-of-way or correct the violation.

9.3.5.2 The amount of Fifty (\$50.00) per day for each failure to make Licensee's books and records available commencing thirty (30) days after the time to make such books and records available as required by this Agreement.

9.3.5.3 . [Reserved.]

9.3.5.4 . [Reserved.]

9.3.6 Violation Use Fees shall be assessed as follows:

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

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

9.3.6.2.1 Licensee shall have thirty (30) days after the notice to pay the Violation Use Fee or give Licensor notice contesting the assertion of noncompliance.

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

9.3.6.2.3 Licensee may appeal the outcome of the hearing to an appropriate court, which shall have the power to review Licensor's decision "de novo". Such appeal to the appropriate court must be taken within sixty (60) days after the issuance of Licensor's determination. Otherwise, the outcome of the hearing shall be final and conclusive.

9.4 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee under this Agreement, and no acceptance by Licensor of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right Licensor may have for additional, different or further payments or performances as provided for in this Agreement. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor or Licensee concerning payments or other performances due hereunder, or failure by Licensor to demand any performance hereunder, shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

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

9.6 Inspection. Licensor shall have access to all portions of the Use Areas at all times and without notice for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Use Areas or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the Use Areas elsewhere in this Agreement or otherwise. This right of access is in addition to access rights for Licensor inspectors or other employees and officers acting within their legal authority.

9.7 Breach by Licensor. Notwithstanding anything in this Agreement to the contrary, if Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after the notice.

9.8 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, Licensor shall have the right to setoff and credit from time to time and at any time, any and all amounts due from Licensee to Licensor, whether pursuant to this Agreement or otherwise, against any sum which may be due from Licensor to Licensee pursuant to this Agreement or otherwise.

## X. TERMINATION

10. Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.1 Surviving Obligations. Expiration of this Agreement (or termination of this Agreement due to an Event of Default or any other reason) does not terminate Licensee's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

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

10.3 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Licensee shall provide to Licensor upon demand recordable disclaimers covering the

Use Areas executed and acknowledged by Licensee and by all persons claiming through this Agreement or Licensee any interest in or right to use the Use Areas.

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

10.5 Prior Improvements. This article also applies to any improvements that Licensee may have made to the Use Areas prior to this Agreement.

## XI. INDEMNITY AND INSURANCE

11. Insurance Responsibility. During the entire term of this Agreement, Licensee shall insure its property and activities at and about the Use Areas and shall provide insurance and indemnification as follows:

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

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million and No/100 Dollars (\$5,000,000.00) for each occurrence, a limit of Five Million and No/100 Dollars (\$5,000,000.00) for products and completed operations annual aggregate, and a limit of Five Million and No/100 Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Licensee's liability under the indemnity provisions of this Agreement. The policy shall contain a "separation of insureds" clause. The required limits may be met by any combination of primary and excess or umbrella coverages.

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

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

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11.1.4 Special Risk Property. Reserved.

11.1.5 Other Insurance. Any other insurance Licensor may reasonably require for the protection of Licensor and Licensor's employees, officials, representatives, officers and agents (all of whom, including Licensor, are collectively "Additional Insureds"), the Right-of-way, surrounding property, Licensee, or the activities carried on or about the Right-of-way. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities might reasonably purchase.

11.2 Policy Limit Escalation. Licensor may elect by written notice to Licensee to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that Licensor reasonably determines to affect the prudent amount of insurance to be provided. Provided, however, Licensor may not increase the required limits of insurance more often than once every five years.

11.3 Form of All Insurance. All insurance provided by Licensee with respect to the Right-of-way, whether required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required.

11.3.2 If Licensee uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

11.3.3 Policies must also cover and insure Licensee's activities relating to the business operations and activities conducted away from the Right-of-way.

11.3.4 Licensee must clearly show by providing copies of insurance certificates, formal endorsements or other documentation acceptable to Licensor that all insurance coverage required by this Agreement is provided.

11.3.5 Licensee's insurance shall be primary insurance with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.6 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against Licensor, and the other Additional Insureds.

11.3.7 All deductibles, retentions, or "self-insured" amounts shall be subject to the following:

11.3.7.1 Licensee shall be solely responsible for any self-insurance amount or deductible.

11.3.7.2 Excluding coverage for Licensee's personal property, such amounts shall not exceed in total One Hundred Thousand Dollars (\$100,000.00) per loss. At such times as Licensee's net worth is more than One Hundred Million Dollars (\$100,000,000.00), such amounts shall not exceed One Million and No/100 Dollars (\$1,000,000.00).

11.3.7.3 Any self insured exposure shall be deemed to be an insured risk under this Agreement.

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

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

11.3.8 All policies except workers' compensation and coverage for Licensee's personal property must name Licensor and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement with respect to claims arising out of Licensee's operations, activities and obligations under this Agreement.

11.3.9 All policies must require the insurer to provide Licensor with at least thirty (30) days prior notice of any cancellation unless such cancellation is for non-payment of premium, in which case Licensor must be provided at least ten (10) days prior notice. The insurer's duty to notify Licensor of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

11.3.10 All policies shall require that notices be given to Licensor in the manner specified for notices to Licensor under this Agreement.

11.3.11 Insurance policies that Licensee provides under this Agreement may also cover one or more of the Related Identical Agreements, but the policy limits must be established in a manner that all coverages and coverage limits required by this Agreement will be provided as required by this Agreement regardless of claims that may be made with respect to the Related Identical Agreements.

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

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

11.6 No Representation of Coverage Adequacy. By requiring insurance herein, Licensor does not represent that coverage and limits will be adequate to protect Licensee. Licensor reserves the right to review any and all of the insurance policies and/or endorsements cited in this

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Agreement, but Licensor has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times.

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

11.8 Risk of Loss. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the Right-of-way or other property of Licensor, Licensee or third parties throughout the term hereof. Licensee shall be responsible for any and all damage to its property and equipment related to this Agreement.

11.9 Insurance to be Provided by Others. If any work under this Agreement is subcontracted in any way, Licensee must execute a written agreement with its subcontractor containing the same Indemnification Clause and Insurance Requirements stated in this Contract protecting Licensor and Licensee. Provided, however, Licensee's subcontractor(s) may provide reduced limits of general liability in the amount of One Million Dollars (\$1,000,000) for each occurrence, One Million Dollars (\$1,000,000) for products and completed operations annual



aggregate, and Two Million Dollars (\$2,000,000) general aggregate limit per policy year. Licensee will be responsible for executing an agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements. This paragraph does not apply to persons who do not actually perform physical labor in the Right-of-way (such as Licensee's consulting design engineers).

## XII. CONDEMNATION

12. Condemnation. The following shall govern any condemnation of any part of or interest in the Use Areas and any conveyance to Licensor or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

12.1 Termination for Condemnation. This Agreement shall terminate on the date (the "Condemnation Date") that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession. Notwithstanding the foregoing, if Licensor reasonably determines that the Use Areas continue to be suitable for Licensee to conduct the Permitted Uses, Licensor may elect to cause this Agreement to continue to remain in effect as to the part of the Use Areas not taken and the Use Fee shall not be reduced or abated. Nevertheless, if Licensee reasonably determines that the Use Areas are not suitable for Licensee to conduct the Permitted Uses, then this Agreement shall terminate.

12.2 Condemnation Proceeds. Licensee hereby assigns and transfers to Licensor Licensee's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Licensee shall execute and deliver to Licensor assignments or other instruments requested by Licensor confirming such assignment and transfer. Licensee shall immediately pay to Licensor any Condemnation Proceeds Licensee may receive. The Condemnation Proceeds shall not include relocation benefits, if any, awarded specifically to Licensee to cover expenses of relocating Licensee's business located at the Use Areas at the time of the condemnation, or any compensation specifically awarded to Licensee for any taking of the Communications Equipment itself. Any repair, relocation or similar costs relating to the Communications Equipment shall be borne by Licensee.

12.3 Power to Condemn. Licensee acknowledges that Licensor and others from time-to-time may use the power to condemn the Use Areas or any interest therein or rights thereto. Licensor has not relinquished any right of condemnation or eminent domain over the Use Areas. Licensor does not warrant that Licensor will not condemn the Use Areas during the term of this Agreement, but Licensor does not presently have intentions to condemn the Use Areas.

## XIII. DAMAGE TO OR DESTRUCTION OF USE AREAS

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

13.1 Damage to Licensee's Improvements. Licensee shall commence restoring the Casualty Damage to Licensee's Improvements within thirty (30) days after any Casualty Damage occurs. Licensee shall complete the restoration work within thirty (30) days after

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commencement. Such work shall be subject to the plans approval process and all other requirements for Licensee's Improvements. Licensee shall perform all restoration work at Licensee's sole cost and expense.

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

#### XIV. LICENSEE'S RECORDS

14. Licensee's Records. During the entire term of this Agreement, Licensee shall keep records and provide information to Licensor as follows:

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

14.1.1 The status of the construction, repair or restoration of Licensee Improvements.

14.1.2 Information indicating whether Licensor or Licensee is in compliance with this Agreement.

14.2 Limitation on Covered Information. Covered Information excludes information that is not relevant to Licensor's or Licensee's rights or obligations under this Agreement. For example, Covered Information does not include the following:

14.2.1 The contents, sources, or destinations of particular telephone calls handled by the Communications Equipment or the volume or timing of such calls.

14.2.2 Licensee's revenues with respect to this antenna site.

14.2.3 Information that does not concern this antenna site.

14.2.4 Information that is not relevant to this Agreement.

14.2.5 Records identifying specific equipment used inside an enclosed building at the Use Areas. However if Licensor has a reasonable, articulable reason to believe that the equipment has caused or is causing a violation of this Agreement, then Licensee shall identify the equipment.

14.3 Records Inspection. At Licensee's expense, Licensee shall:

14.3.1 Permit and assist Licensor and its representatives upon twenty-one (21) days notice to inspect, audit, and copy Licensee's records of Covered Information. Provided, however, Licensor shall not request such information more often than once per calendar year absent exigent circumstances that may arise after Licensor's most recent request for information.

14.3.2 Make the records of Covered Information (and reasonable accommodations for Licensors' audit and inspection) available to Licensors at Licensors' offices or a mutually agreeable location in Maricopa County, Arizona.

14.3.3 Cause Licensee's employees and agents and accountants to give their full cooperation and assistance in connection with Licensors' access to the Covered Information.

14.4 Record Retention. Licensee shall preserve records of the Covered Information in a secure place at Licensee's corporate headquarters in the continental United States for a period ending five (5) years after the time period reported by the records.

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

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

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

## XV. COMPLIANCE WITH LAW

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

15.1 Applicability of Municipal Law. Without limitation, Licensee shall comply with municipal laws as follows:

15.1.1 Licensee acknowledges that this Agreement does not constitute, and Licensors has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Licensee with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the Use Areas, or the Street Parcel or Licensee's use of the Use Areas, the Street Parcel or the Right-of-way.

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

15.1.3 This Agreement is not intended to diminish any performances that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen.

15.1.4 This Agreement cannot and does not impair City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Licensee, the Use Areas, the Street Parcel, or the right-of-way.

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

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

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

15.2.1 Licensee shall cause its senior internal engineer responsible for compliance with the FCC Rules to deliver to Licensor a written letter (the "RF Letter"), as follows:

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

15.2.1.2 Licensee shall provide an RF Letter to Licensor at the following times:

15.2.1.2.1 Prior to operating the Communications Equipment for the first time.

15.2.1.2.2 Prior to operating the Communications Equipment after any hardware or software modification, upgrade, repair, or other alteration that alters radio frequency emissions from the Communications Equipment.

15.2.1.2.3 Upon notice by Licensor requesting an RF Letter, such requests not to be made more often than once (1) in any thirty-six (36) month period.

15.2.2 Licensee shall maintain records of radio frequency measurements and Communications Equipment performance in accordance with the FCC Rules.

15.2.3 Reserved.

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

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

15.5 Encroachment Permit. This Agreement constitutes an "encroachment permit" under Chapter 47 of the Scottsdale Revised Code to the extent of granting permission for the Communications Equipment to exist on the Right-of-way but not to allow any construction or other work of any description in the Use Areas or to allow obstruction of traffic or alteration of Licensor's improvements. Before performing any work on the Right-of-way, Licensee shall obtain the following additional encroachment permits, as applicable:

- 15.5.1 Permission to Work in the Right-of-way.
- 15.5.2 Permission to Alter City Improvements.
- 15.5.3 Permission to Obstruct Traffic.
- 15.5.4 Any other applicable permits regarding work in the Right-of-way.

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

15.7 Permits. This Agreement does not relieve Licensee of the obligation to obtain permits, licenses and other approvals from Licensor or other units of government that are required for the erection, construction, reconstruction, installation, operation or maintenance of the Communications Equipment or provision of Telecommunications Services; or from compliance with applicable municipal codes, ordinances, laws and policies, such as zoning and land use ordinances and regulations, pavement cut and restoration ordinances and regulations, subdivision and project improvement ordinances, curb cut permits, building permits, right-of-way permits and the like.

## XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Licensee (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1 Assignments Affected. Every assignment of any of Licensee's interest in the Right-of-way or this Agreement or any of Licensee's rights or interests hereunder is prohibited unless Licensee first receives from Licensor notice of Licensor's consent to the assignment. (Such notice of consent may be contained below in this Agreement). All references in this Agreement to assignments by Licensee or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance or transfer of Licensee's right to use the Right-of-way under this Agreement or any interest or rights of Licensor under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting Licensee's rights to use the Right-of-way (collectively "Liens").

16.1.3 Any assignment by Licensee of any interest in this Agreement for the benefit of creditors, voluntary or involuntary.

16.1.4 A Licensee Insolvency.

16.1.5 The occurrence of any of the foregoing by operation of law or otherwise.

16.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Licensee.

16.2 Pre-approved Assignments. Subject to certain conditions hereafter stated, Licensor hereby consents to certain assignments (the "Pre-approved Assignments"). Only the following assignments are Pre-approved Assignments:

16.2.1 Complete Assignment of Agreement. Licensee's complete assignment of all of Licensee's rights and Interests in the Right-of-way and this Agreement to a single assignee who meets all of the following requirements, as determined by Licensor in Licensor's reasonable discretion (a "Qualified Operator"):

16.2.1.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Licensee's and adequate to successfully perform under this Agreement.

16.2.1.2 The assignee is experienced in the management and operation of similar projects.

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16.2.1.3 The assignee assumes all of Licensee's obligations relating to this Agreement.

16.2.1.4 The assignee has a net worth of not less than Fifty Million and No/100 Dollars (\$50,000,000.00).

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

16.2.3 Merger. The merger or consolidation of Licensee with another entity that is a Qualified Operator.

16.2.4 Common Ownership Transfer. Licensee's complete assignment of all of Licensee's rights and interests in the Right-of-way and this Agreement to single assignee who is and remains a wholly owned subsidiary of Licensee's sole owner as of the date of this agreement (or a wholly owned subsidiary of a wholly owned subsidiary of Licensee's sole owner as of the date of this Agreement).

16.2.5 Complete Lien of the Agreement. A Lien that covers Licensee's entire interest in this Agreement. Liens upon the Communications Equipment are allowed but in no event shall the Communications Equipment be operated at the Use Areas except by Licensee.

16.3 Limitations on Assignments. Licensor's consent to any assignment, including without limitation, Pre-approved Assignments, is not effective until the following conditions are satisfied:

16.3.1 Except for the sale of stock, Licensee shall provide to Licensor a copy of the document assigning this Agreement but may redact confidential terms and conditions of the Agreement upon notice of the same to Licensor. In the event that Licensor determines that it is necessary to view confidential terms and conditions, Licensee shall allow Licensor's Contract Administrator to privately review such confidential terms and conditions but Licensor will not copy or otherwise record such confidential terms and conditions without the consent of Licensee.

16.3.2 Each assignee must execute an assumption of this Agreement in form acceptable to Licensor.

16.3.3 Each Pre-approved Assignment must satisfy all other requirements of this Agreement pertaining to assignments.

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

16.5 Effect of Assignment. Prior to any assignment, each assignee must execute an assumption of this Agreement in the form attached hereto as **Exhibit "E"**. No action or inaction by Licensor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublicensee or occupant as Licensee, or a release of Licensee from the further performance by Licensee of the provisions of this Agreement. Consent by Licensor to an assignment shall not relieve Licensee from obtaining Licensor's consent to any further assignment. No assignment shall release Licensee from any liability hereunder.

16.6 Unity of Assignment. Any assignment must cover Licensee's entire interest in the Communications Equipment and this Agreement. All of Licensee's rights under this Agreement must at all times remain in the hands of a single person or entity so that Licensor is only dealing with a single Licensee as to this Agreement and the Communications Equipment.

16.7 Enforceability after Assignment. No consent by Licensor shall be deemed to be a novation. Licensor's consent to any assignment does not in any way expand or modify this Agreement or waive, diminish or modify any of Licensor's rights or remedies under this Agreement. This Agreement shall be enforceable against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

16.8 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of this Agreement by Licensee is contemplated or bargained for. Without limitation, Licensor has the right to impose upon any consent to assignment such conditions and requirements as Licensor may deem appropriate.

16.9 Form of Assignment. Any assignment shall be by agreement in form and content acceptable to Licensor. Without limitation, any assignment shall specify and require that each assignee acquiring any interest under this Agreement shall assume and be bound by, and be obligated to perform the terms and conditions of this Agreement.

16.10 Consent to Assignments. Licensee shall attach to each Pre-approved Assignment a copy of Licensee's notice to Licensor of the Pre-approved Assignment and other required documents, Licensee shall attach to each other assignment, a copy of Licensor's notice to Licensee of Licensor's consent to the assignment. This Agreement shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

16.11 Assignment Fee. Licensee shall pay to Licensor in advance the sum of Five Hundred Dollars (\$500) as a nonrefundable fee for legal, administrative and other expenses related to every Pre-approved Assignment (other than the sale of publicly traded stock) or to any request for a consent to assignment, whether or not Licensor grants such request. If Licensee simultaneously assigns Related Identical Agreements to a single assignee in a single transaction, then the total of such fees for this Agreement and the Related Identical Agreements shall be capped at Three Thousand Five Hundred Dollars (\$3,500.00).

16.12 Sublicenses Not Deemed an Assignment. Licensor and Licensee agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain



Communications Equipment deployed by Licensee in the Rights-of-way pursuant to this Agreement may be owned and/or operated by Licensee's third-party wireless carrier customers ("Carriers") and installed and maintained by Licensee pursuant to license agreements between Licensee and such Carriers. Notwithstanding any provision in this Agreement to the contrary, such Communications Equipment shall be treated as Licensee's Communications Equipment for all purposes under this Agreement, and further, shall not be deemed an assignment, provided that (i) Licensee remains responsible and liable for all performance obligations under the Agreement with respect to such Communications Equipment; (ii) Licensor's sole point of contact regarding such Communications Equipment shall be Licensee; and (iii) Licensee shall have the right to remove and relocate the Communications Equipment.

## XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1. Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

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

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

17.4. Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, then:

17.4.1. The invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement.

17.4.2. This Agreement shall be automatically reformed to secure to the parties the benefits of the unenforceable provision, to the maximum extent consistent with law.

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

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

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

17.8. Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by certified mail, return receipt requested, postage prepaid or via an overnight express mail or delivery service requiring a signed receipt and addressed to:

If to Licensor:            Wireless Telecommunications License Administrator  
                                  City of Scottsdale  
                                  Current Planning Department  
                                  One Civic Center  
                                  Scottsdale, AZ 85251

Copy to:                    City Attorney  
                                  City of Scottsdale  
                                  3939 N. Drinkwater Blvd.  
                                  Scottsdale, AZ 85251

If to Licensee:            \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

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

17.9. Billing Address. Licensor is not obligated to issue invoices or other routine requests for Use Fee payments. But, if Licensor elects to do so, then Licensee prefers that Licensor direct correspondence to Licensee about routine Use Fee payment matters to the following address (instead of using the address provided for notices):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17.10. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence, memoranda and representation regarding the Right-of-way.

17.11. Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Licensee or Licensor.

17.12. Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. If funds necessary to fulfill Licensor's obligations under this Agreement are not appropriated by the Scottsdale City Council, Licensor may terminate this Agreement, by notice to Licensee. Licensor shall use best efforts to give notice of such a termination to Licensee at least thirty (30) days prior to the end of Licensor's then current fiscal period. Termination in accordance with this provision shall not constitute a breach of this Agreement by Licensor. No person will be entitled to any compensation, damages or other remedy from Licensor if this Agreement is terminated pursuant to the terms of this subsection.

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

17.14. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. Licensor shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.

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

17.16. Attorneys' Fees. If any action, suit or proceeding is brought by either party hereunder to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to an award of reasonable attorneys' fees and other reasonable litigation costs.

17.17. Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Licensor has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County Superior Court or a Federal district court sitting in Maricopa County. Licensor and Licensee consent to personal jurisdiction in such courts.

17.18. Approvals and Inspections. All approvals, reviews and inspections by Licensor under this Agreement or otherwise are for Licensor's sole benefit and not for the benefit of Licensee, its contractors, engineers or other consultants or agents, or any other person.

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

17.20. Recording. This Agreement shall not be recorded.

17.21. Statutory Cancellation Right. In addition to its other rights hereunder, Licensor shall have the rights specified in A.R.S. § 38-511.

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17.22. Legal Workers. If and to the extent A.R.S. §41-4401 is applicable to this Agreement, Licensee shall comply with laws regarding workers as follows:

17.22.1. Licensee warrants to Licensor that Licensee will comply with all federal immigration laws and regulations that relate to their employees and that Licensee complies with the E-Verify Program under A.R.S. §23-214(A). Licensee shall further contractually require that any of its subcontractors working under the authority of this Agreement also warrant to Licensor that such subcontractors comply to the same extent.

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

17.22.3. Licensor retains the legal right to inspect the papers of any employee of Licensee or any subcontractor who works on this Agreement to ensure that they or the subcontractor is complying with the warranty given above.

17.22.4. Licensor may conduct random verification of Licensee's and its subcontractors' employment records to ensure compliance with the warranty given above.

17.22.5. Licensee shall indemnify, defend and hold Licensor harmless for, from and against all losses and liabilities arising from any and all violations of the warranty given above.

17.23. Foreign States. In accordance with A.R.S. §35-397, Licensee certifies that it does not have "scrutinized business operations" in Sudan.

17.24. Licensee Authority. The person executing this Agreement on behalf of Licensee personally warrants to Licensor his authority to do so.

## **Site Plan**

This exhibit is not provided as part of the Standard Terms. It will be provided by the telecom provider at the time of the Site License and will be attached to the Site License. It must be prepared in compliance with the Standard Terms, the Site License text, and the current instructions from City's Wireless Telecom Policy Coordinator.

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## **Boundary Plan**

This exhibit is not provided as part of the Standard Terms. It will be provided by the telecom provider at the time of the Site License and will be attached to the Site License. It must be prepared in compliance with the Standard Terms, the text of the Site License, and the current instructions from City's Wireless Telecom Policy Coordinator.

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**EXHIBIT A** to Resolution 11079  
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## 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. 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.
- 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 issuer in Maricopa County, Arizona upon which the issuer may endorse its payments.

1.6 The issuer specifies a telefax number, email address, and street address at which City may present drafts on the Letter of Credit.

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

1.8 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, 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.

1.9 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.

1.10 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, the 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, at which drafts upon the Letter of Credit may be presented.

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 \$1 billion.

**Form Of Letter Of Credit**

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

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

Financial Services General Manager  
City of Scottsdale  
Suite 210  
7447 E. Indian School Road  
Scottsdale, AZ 85253

Dear Sir or Madam:

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

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

- 1. By telefax to (\_\_\_\_) \_\_\_\_\_.
- 2. By email to \_\_\_\_\_.
- 3. By hand or overnight courier service delivery to:  
[This address must be in Maricopa County, Arizona.]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 4. By hand or overnight courier service delivery to:  
[This address need not be in Maricopa County, Arizona]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Letter of Credit is valid until \_\_\_\_\_, 20\_\_ and shall thereafter be automatically renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to expiration we notify you in writing, by either registered or certified mail, that we elect not to renew the Letter of Credit for such additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available upon your presenting to us your draft on or before the then current expiration date.

This Letter of Credit is subject to the UCP600. This Letter of Credit is not assignable.

\_\_\_\_\_ [bank name] \_\_\_\_\_, a \_\_\_\_\_  
By \_\_\_\_\_ [bank officer's signature] \_\_\_\_\_  
\_\_\_\_\_ [bank officer's name printed] \_\_\_\_\_  
Its \_\_\_\_\_ [bank officer's title] \_\_\_\_\_  
Phone: \_\_\_\_ [bank officer's phone number] \_\_\_\_\_

Schedule 1  
Exhibit "C"  
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**Form Of Draft On Letter Of Credit**

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

From: Financial Services General Manager  
City of Scottsdale  
Suite 210  
7447 E. Indian School Road  
Scottsdale, Arizona 85253

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

Ladies and Gentlemen:

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

Please make your payment to the City of Scottsdale in the form of a wire deposit to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the Financial Services General Manager of the City of Scottsdale.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at 480-312-2427 so that I can correct it. Also, please immediately notify the City Attorney at 480-312-2405.

Thank you.

\_\_\_\_\_  
City of Scottsdale, Financial Services General Manager

Project name: \_\_\_\_\_

Plan check number: \_\_\_\_\_

Case number: \_\_\_\_\_

**ANTENNA SITE  
CONSTRUCTION BOND**

THIS ANTENNA SITE CONSTRUCTION BOND (the "Bond") is made  
\_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a  
\_\_\_\_\_ ("Surety") in favor of the City of Scottsdale, an  
Arizona municipal corporation ("Obligee").

**RECITALS**

A. \_\_\_\_\_, a \_\_\_\_\_ ("Principal") has granted to Obligee a Antenna Site Right-of-way License Agreement (the "Antenna Agreement"), dated \_\_\_\_\_, 20\_\_\_\_ whereby Principal has agreed to perform certain construction and demolition work, construct certain improvements and render various other performances (collectively, the "Work"), as a condition to Obligee entering into the Antenna Agreement. The Work specifically includes the demolition, removal, restoration and other work required at the end of the Antenna Agreement.

B. The Antenna Agreement requires Principal to furnish this Bond in the amount of \_\_\_\_\_ Dollars (\$) (the "Bond Amount").

C. Obligee would not have entered into the Antenna Agreement or allowed the Work without this Bond.

NOW THEREFORE, in consideration of the following, and for the purpose of inducing Obligee to allow the Antenna Agreement and the Work, Surety hereby covenants to Obligee as follows:

1. Covenant to Construct. Surety hereby promises to Obligee that Surety will perform all of Principal's construction and demolition duties and obligations under the Antenna Agreement and irrevocably and unconditionally covenants to Obligee to timely perform the Work at Surety's expense if Principal does not timely so perform. If Principal does so timely perform, Surety shall have no obligation under this Bond. Surety's obligation shall be as full and binding upon Surety as if the Antenna Agreement had been executed by Surety in favor of Obligee.

2. Term of Bond. This Bond shall remain in full force and effect until one of the following has occurred:

2.1 The Work is properly completed and paid for at no expense to Obligee.

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Exhibit "D"  
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2.2 Surety has paid to Obligee a cash payment in the amount of the lesser of the Bond Amount or an amount estimated by Obligee to be adequate to complete the Work.

2.3 Surety has expended cash equal to the Bond Amount to accomplish the Work.

3. Future Obligee Actions. Obligee may formally or informally alter, compromise, modify, accelerate, extend or change the time or manner for the performance of the Work or any other aspect of the Antenna Agreement upon such terms and at such times as Obligee deems best and without notice to Surety. None of such actions shall in any way affect, diminish, release or impair any of Surety's obligations hereunder or give Surety any recourse or defense against Obligee, regardless of any notice Obligee may or may not give to Surety.

4. Surety's Binding Covenant. Surety's obligations are subject to the following while the bond is in force and effect:

4.1 Surety shall keep itself fully informed about the Work and Principal's affairs. Surety waives any and all obligations of Obligee to communicate to Surety any information whatsoever regarding Principal or the progress of the Work.

4.2 Surety's obligations hereunder are joint and several with the obligations of Principal. Obligee may bring separate actions against Surety whether or not Obligee brings action against Principal or any other person, and whether or not Principal or any other person is joined in any actions.

4.3 Until the Work is completed, Surety shall have no right of subrogation and hereby waives, as between Obligee and Surety, any right to enforce any remedy that Obligee now has, or may hereafter have, against Principal, and waives, as between Obligee and Surety, any benefit of, and any right to participate in, any security now or hereafter held by Obligee.

4.4 Surety shall remain responsible to perform the Work until the Work is completed, notwithstanding any act, omission or circumstance that might otherwise operate as a legal or equitable discharge of Principal.

5. Waivers. Surety hereby waives and agrees not to assert or take advantage of any of the following:

5.1 Any right to require Obligee to proceed against or exhaust its recourse against Principal or any other person, or any security or collateral held by Obligee at any time, or to use any other remedy in its power before proceeding against Surety.

5.2 Any defense that may arise by reason of (i) the incapacity, lack of authority, death, bankruptcy, receivership, or disability of Principal or others; (ii) illegality or impossibility; (iii) Obligee's failure to file or enforce a claim against Principal, its successors or others, or their estates (either in administration, bankruptcy or any other proceeding); or (iv)

inability or failure to enforce in whole or in part any document mentioned in this Bond or in the Antenna Agreement.

5.3 Formal presentment of this Bond, demand for performance, indulgences, and other formalities of any kind whatsoever.

6. Surety's Warranties. Surety hereby warrants and represents to Obligee that:

6.1 Surety has an AM Best, Inc. rating of at least A-VI.

6.2 Surety satisfies Obligee's current standards and requirements to issue this Bond.

6.3 Surety is fully informed about the Work and all aspects of Principal's affairs that Surety deems relevant to Surety's obligations under this Agreement.

7. Miscellaneous. This Bond is subject to the following additional provisions:

7.1 Binding Effect of Bond. This Bond shall be binding on and inure to the benefit of Obligee and Surety and their successors and assigns. Surety shall give Obligee notice of any merger or assignment.

7.2 Amendments. This Bond may not be amended except by a formal writing executed by Obligee and Surety.

7.3 Limited Severability. In the event any term, condition, covenant, stipulation, agreement or other provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such provision shall in no way affect any other provision herein contained. Further, this Bond shall be deemed automatically reformed to secure to Obligee the legal, equitable, practical and other benefits of the written provisions of this Bond to the very maximum extent permitted by law.

7.4 Time of Essence. Time is of the essence of each and every provision of this Bond.

7.5 Integration. This Bond constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding or negotiations or discussions regarding the subject matter hereof.

7.6 Construction. Whenever the context of this Bond requires, the singular shall include the plural, and the masculine shall include the feminine. The terms of this Bond were established in light of the plain meaning of this Bond and this Bond shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Surety.

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

7.8 No Third Party Beneficiaries. No person or entity (including Principal) shall be a third party beneficiary to this Bond or shall have any right or cause of action hereunder. Obligee shall have no liability to third parties for any approval of plans, Surety's construction of improvements, Surety's negligence, Surety's failure to comply with the provisions of this Bond (including any absence or inadequacy of insurance required to be carried by Surety), or otherwise as a result of the existence of this Bond.

7.9 Attorneys' Fees. If Obligee brings any action or suit or proceeding to enforce compliance with this Bond or for failure to observe any of the covenants of this Bond or to vindicate or exercise any of Obligee's rights or remedies hereunder, Surety shall pay Obligee all costs of such action or suit and all expenses of such action or suit together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

7.10 Choice of Law. This Bond shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Obligee has not waived its claims procedures as respects this Bond. Exclusive proper venue for any action regarding this Bond shall be Maricopa County.

7.11 Statutory Cancellation Right. In addition to its other rights hereunder, Obligee shall have the rights specified in A.R.S. § 38-511.

7.12 Signatures. This Bond is effective when signed by Surety.

7.13 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Obligee:                    General Manager  
    Planning and Development Services  
    7447 East Indian School Road, Suite 105  
    Scottsdale, AZ 85251

Copies to:                        City Attorney  
    City of Scottsdale  
    3939 North Drinkwater Boulevard  
    Scottsdale, AZ 85251

If to Surety:                     \_\_\_\_\_  
    \_\_\_\_\_  
    \_\_\_\_\_

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or to such other street address within Maricopa County, Arizona as may be designated by the respective parties in writing from time to time. Service of notice by mail shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

MADE AS OF the date first above stated.

**SURETY:** \_\_\_\_\_, a

\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

**BOND OFFERED BY PRINCIPAL:** \_\_\_\_\_, a

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM FOR CITY:

\_\_\_\_\_  
\_\_\_\_\_, General Manager,  
Planning and Development Services

\_\_\_\_\_  
\_\_\_\_\_  
Scottsdale City Attorney

Assumption Of Antenna Site Right-Of-Way License Agreement

Regarding \_\_\_\_\_

This assumption is made pursuant to paragraph 16.5 of that certain Antenna Site Right-of-way License Agreement (the "Agreement") between City of Scottsdale, an Arizona municipal corporation ("Licensor") and \_\_\_\_\_, a \_\_\_\_\_ ("Licensee") dated \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), having acquired the rights of the original licensee under the Agreement, hereby assumes the Agreement, agrees to be bound thereby, and obligates itself to perform the terms and conditions of the Agreement, all in favor of Licensor. The person signing this document on behalf of Assignee warrants to Licensor his authority to do so.

Dated: \_\_\_\_\_, 20\_\_

ASSIGNEE: \_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

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

My Commission Expires:

\_\_\_\_\_  
Date

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