

Town License# _____

Wireless Provider's Name:

WIRELESS FACILITY LICENSE AGREEMENT

THIS WIRELESS FACILITY LICENSE AGREEMENT (the "License Agreement") is made and entered into this _____ day of _____, 20____ ("Effective Date"), by and between the Town of Fountain Hills, an Arizona municipal corporation ("Town"), and _____, a _____ ("Wireless Provider").

RECITALS

A. The Town of Fountain Hills "Wireless Facilities Standard Terms and Conditions" sets out various recitals and terms (collectively the "Terms").

B. Town holds interests in certain parcels of land (the "Street Parcels") comprising street Right- of-way within the Town of Fountain Hills.

C. This License Agreement allows Wireless Provider to use certain limited portions of Town's specific Street Parcels pursuant to an approved Wireless Facilities Encroachment Permit ("Encroachment Permit").

D. The portions of the Street Parcels that this License Agreement permits Wireless Provider to use (the "Use Areas") are defined in the package of maps and related materials (the "Boundary Plan") attached to each Encroachment Permit Application.

E. Wireless Provider desires to install and operate on the Use Areas the wireless telecommunications receiving, processing and transmitting devices and related electronic equipment that is specified on each Site Plan (the "Communications Equipment") subject to the requirements of this License Agreement and associated Encroachment Permit. The Communications Equipment is limited to the actual electronic equipment, portable cabinets for such equipment, enclosures, and antennas ("Antennas") utilized for wireless communications, all as shown on the drawings (the "Site Plans") attached to each Encroachment Permit. Notwithstanding anything in this License Agreement or associated Encroachment Permit to the contrary, the Communications Equipment excludes any item not shown on the approved Site Plan.

F. The volume of the Enclosure and the above ground portion of its pad shall be as shown in the Site Plan incorporated into each Encroachment Permit Application and shall be limited as stated on that Site Plan.

G. The Street Parcel in each Encroachment Permit Application shall state whether it is currently improved with an electrical, traffic signal, street light, or antenna support pole (the "Utility Pole") which is owned by Town, and the approximate height of the Utility Pole.

H. In the Encroachment Permit Application, the Wireless Provider will indicate whether it proposes to use the existing Utility Pole, replace the existing Utility Pole, or install a new Utility Pole that Town or Wireless Provider will own. If the Utility Pole is owned by a third-party, the Wireless Provider shall provide documentation confirming the third-party owners' consent for Wireless Provider's use of the Utility Pole.

I. In order to install the Communications Equipment, Wireless Provider desires to construct supporting improvements and perform all other work shown on the Site Plan (collectively the "Project") for each site.

J. Wireless Provider shall complete the entire Project and put the Communications Equipment in full operation no later than one hundred eighty (180) days after the date of the issuance of the Encroachment Permit (the "Completion Deadline") for each site.

K. Town desires to grant to Wireless Provider the right to install, maintain, operate and repair the Communications Equipment (the "Permitted Uses") subject to the requirements of this License Agreement and as specified in each specific Encroachment Permit granted pursuant to this License Agreement.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Wireless Provider, and the covenants and agreements contained herein to be kept and performed by Wireless Provider, and other good and valuable consideration, Town and Wireless Provider agree as follows:

I. LICENSE TERMS

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

1.1 Terms Incorporated. The Terms (as defined in the Recitals above) are all incorporated by reference as if set out in full herein. WIRELESS PROVIDER WARRANTS AND REPRESENTS THAT WIRELESS PROVIDER HAS READ AND AGREES TO THE TERMS. Capitalized terms used but not defined in this License Agreement shall have the meanings assigned by the Terms.

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

1.2.1 Wireless Provider's Boundary Plan Responsibility. It is Wireless

Provider's responsibility before submitting any Encroachment Permit Application authorized by this License Agreement to ensure that the Boundary Plan is prepared as follows:

1.2.1.1 Wireless Provider shall insure that the Boundary Plan clearly depicts all portions of the Street Parcel that Wireless Provider desires to use and that each such area is clearly shown on the Boundary Plan and labeled to clearly indicate which of the categories of Exclusive Areas or Shared Areas set out in the Terms applies to the area.

1.2.1.2 If the Boundary Plan does not clearly show any portion of the Street Parcel as one of the categories of Exclusive Areas or Shared Areas set out in the Terms, then such portion of the Street Parcel is not part of the Use Areas and Wireless Provider may not use such portion of the Street Parcel, even if the use is discussed in the Terms.

1.2.1.3 Any Exclusive Area or Shared Area described or named in the Terms that is not clearly depicted and correctly labeled on the Boundary Plan is excluded from this License Agreement and Encroachment Permit and unavailable for Wireless Provider's use.

1.2.1.4 Any portion of the Boundary Plan or the Site Plan that indicates a Wireless Provider's use of the Street Parcel that is not one of the Exclusive Areas or Shared Areas specifically enumerated in the Terms is excluded from this License Agreement and Encroachment Permit and not available for Wireless Provider's use.

1.2.1.5 All work, improvements and equipment within an Exclusive Area or Shared Area is limited to the purposes enumerated in the Terms for that particular Exclusive Area or Shared Area.

1.2.1.6 This License Agreement and Encroachment Permit does not allow use of any land other than the specified portions of the Street Parcel that are Exclusive Areas or Shared Areas.

1.2.1.7 Any change to the Boundary Plan after Town issues the Encroachment Permit is void unless it is memorialized in a formal amendment to this License Agreement.

1.2.2 Site Plan. It is Wireless Provider's responsibility before submitting any Encroachment Permit Application authorized by this License Agreement to ensure that the Site Plan correctly shows the work that Wireless Provider intends to perform, that the Site Plan correctly shows all improvements and equipment that Wireless Provider intends be located on the Use Areas, that the Site Plan shows no work, improvements or equipment outside the Exclusive Areas and Shared Areas properly depicted and labeled on the Boundary Plan, and that all work, improvements and equipment is encompassed within the purposes enumerated in the Terms for that particular Exclusive Area or Shared Area. Any work, improvements or equipment not conforming to all the foregoing is prohibited, even if it is clearly shown on the Site Plan or discussed in the Terms. Any refinement or other

change to the Site Plan after Town issues a Encroachment Permit is void unless Wireless Provider obtains Town's approval of the change pursuant to the plans approval processes set out in the Terms and pursuant to all applicable regulatory requirements.

1.2.3 Term of Agreement. The term of this Agreement is as stated in the Terms.

1.2.4 Wireless Provider's Payments. Wireless Provider shall pay to Town the amounts described in the Terms.

1.2.5 Use Restrictions. Wireless Provider shall comply with the use restrictions set out in the Terms.

1.2.6 Encroachment Permits. This Agreement constitutes an "Encroachment Permit" under Chapter 16-1-4.F of the Town of Fountain Hills Town Code to the extent of granting permission for the Communications Equipment to exist on the Street Parcel but not to allow any construction or other work of any description in the Right-of-way or to allow obstruction of traffic or alteration of Town's improvements. Before performing any work on the Right-of-way, Wireless Provider shall obtain the following additional encroachment permits, as applicable:

1.2.6.1 Permission to work in the Right-of-way.

1.2.6.2 Traffic control plan.

1.2.6.3 Any other applicable permits regarding work in the Right-of-way.

1.2.7 Compliance with Law. Wireless Provider acknowledges that this License Agreement or any issued Encroachment Permit does not constitute, and Town has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Wireless Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the Town of Fountain Hills or any other governmental body upon or affecting Wireless Provider's use of the Street Parcel. For example, Wireless Provider shall comply with all zoning, building and Right-of-way codes, ordinances and policies.

2. Permitted Uses. Town hereby grants to Wireless Provider the right to install, maintain, operate and repair the Communications Equipment (the "Permitted Uses") subject to the requirements of this License Agreement and as specified in each specific Encroachment Permit granted pursuant to this License Agreement.

3. Annual Blanket Encroachment Permit for Incidental Work at a Site: On or before January 1 of each calendar year, the Wireless Provider shall submit an application for a Blanket Encroachment Permit to perform incidental and routine maintenance work at any site in the Town's Right-of-way. The Blanket Encroachment Permit shall only cover such activities as checking and inspecting communications equipment and antennas, changing

circuit packs and cards, cleaning the cabinets and immediate area, and other similar activity. The Blanket Encroachment Permit does not include any work that requires the replacement of cabinets, antennas, or communications equipment, or any excavation, trenching, or concrete or roadway cutting within the Boundary Plan use area.

4. Town's Initial Information. Unless and until Town gives notice otherwise, Town's contract administrator shall be the Development Services Director.

5. Wireless Provider's Initial Information. Unless and until Wireless Provider gives notice otherwise:

5.1 Wireless Provider's network operations center phone number as required by the Terms is (____)_____.

5.2 Wireless Provider's address for notices as required by the Terms shall be:

5.3 Wireless Provider's billing address for routine billing invoices as required by the Terms shall be:

EXECUTED as of the date first given above.

TOWN: Town of Fountain Hills,
an Arizona municipal corporation

By: _____

Town Manager

Approved as to form: _____

Town Attorney

WIRELESS PROVIDER: _____

a _____
By: _____
Name: _____
Its: _____

WIRELESS FACILITIES STANDARD TERMS AND CONDITIONS

The Common Council of the Town of Fountain Hills (“Town”) has adopted the following recitals, terms and conditions (collectively, the “Terms”) to govern the use of Town owned right-of-way for the placement of wireless facilities by a Wireless Provider as defined by the Arizona Revised Statutes, Section 9-591, et. seq. These Terms are effective as of _____, 2018, and may be amended only upon approval of the Town Council.

RECITALS

- a. Town owns the public street and alley rights-of-way and public utility easements within the boundaries of the Town of Fountain Hills that are designed for use by utility companies for installation, operation and repair of water, electrical and other utilities pursuant to franchise, licenses or other agreements between utility companies and Town (collectively the “Right-of-way”).
- b. Town is the owner of certain street lights and traffic signals (individually a “Utility Pole” or collectively “Utility Poles”) located in the Right-of-way (as hereinafter defined).
- c. Pursuant to A.R.S. 9-591, et seq., one or more Wireless Providers may desire to establish and operate a network of Small Wireless Facilities to enhance wireless service coverage within the Town.
- d. Town anticipates that one or more Wireless Providers may desire to install Small Wireless Facilities on the Town’s Utility Poles, install new and replacement Utility Poles capable of supporting Small Wireless Facilities, and in certain cases and where permitted by the Town’s Code, install other Small Wireless Facilities or monopole towers in the Right-of-way.
- e. Wireless Providers agree to comply with the Town’s Right-of-way use requirements as provided in these Terms. Furthermore, Wireless Providers agree to file the appropriate applications and secure the appropriate licenses and permits required by the Town for placement of Wireless Facilities within the Town’s boundaries.
- f. Town Utility Poles approved for Small Wireless Facilities shall retain their primary governmental purpose, and use of the Right-of-way by Wireless Providers shall not interfere with the Town’s use thereof. The primary purpose of these Terms is to protect the health, safety and welfare of the public, and to protect the value of and physical integrity of publicly-owned property and assets.
- g. Because Town’s existing streetlight poles and traffic signal poles are not designed to safely support the additional weight and stress of Wireless Facilities, Wireless Service Providers shall be required to provide poles designed to support these facilities to replace existing poles prior to attaching Wireless Facilities.

TERMS

1. DEFINITIONS. For the purposes of the Terms:

“Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals and that is used in providing wireless services.

“Application Fee” means the Town’s encroachment permit application, review and other fees related to the issuance of the permit.

“Base Use Fee” means the amount that the Company shall pay to Town for each year of this license for use of Town Right-of-way and Town-owned Pole, as set out in the current fee schedule.

“Communications Equipment” means any and all electronic equipment at the Small Wireless Facility location that processes and transports information from the antennas to the Wireless Provider’s network.

“Competing Users” means entities that own the water pipes, cables and wires, pavement, and other facilities which may be located within the Right-of-way. The Competing Users include without limitation, the Town, the State of Arizona and its political subdivisions, the public, and all manner of utility companies and other existing or future users of the Use Areas.

“Encroachment Permit” means a permit issued pursuant to Chapter 16 of the Fountain Hills Town Code allowing a utility pole, monopole, small wireless facility or wireless support structure to be placed in the Town’s Right-of-way pursuant to the Wireless Provider’s License Agreement.

“FCC” means the Federal Communications Commission.

“FCC Rules” means all applicable radio frequency emissions laws and regulations.

“FCC OET Bulletin 65” means the FCC’s Office of Engineering & Technology Bulletin 65 that includes the FCC Radio Frequency Exposure Guidelines.

“License Agreement” means the license incorporating these Terms for Wireless Providers to install and operate Wireless Facilities in the Town’s Right-of-way.

“Monopole” means a wireless support structure that is not more than forty inches in diameter at the ground level and that has all of the wireless facilities mounted on the pole or contained inside of the pole.

“RF” means radio frequency.

“RF Letter” means a letter attesting to the Wireless Provider’s compliance with FCC RF exposure guidelines from the Wireless Provider’s senior internal engineer.

“Right-of-way” as defined for wireless sites in A.R.S. §9-591(18) means the

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

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

“Small Wireless Facility” as defined in A.R.S. §9-591(19), means a Wireless Facility that meets both of the following qualifications:

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

“Supplemental Parcel Agreement” means an agreement authorizing the Wireless Provider to use property outside of the Town’s Right-of-way, whether owned by the Town or a third-party.

“Third Party Areas” means the portions of the Right-of-way, 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.

“Violation Use Fee” means the types of fees that the Town has available to remedy certain breaches of the License Agreement by a Wireless Provider.

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

- a. Means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following:
 - i. Equipment associated with wireless communications.
 - ii. Radio transceivers, antennas, coaxial or fiber-optic cables, regular and backup power supplies and comparable equipment, regardless of technological configuration.
- b. Includes small wireless facilities.
- c. Does not include the structure or improvements on, under or within which the equipment is collocated, wireline backhaul facilities, coaxial or fiber-optic that is between wireless support structures or utility poles or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.
- d. Does not include Wi-Fi radio equipment described in Section 9-506, Subsection I or microcell equipment described in Section 9-584, Subsection E.

“Wireless Infrastructure Provider” as defined in A.R.S. §9-591(23) means any person that is authorized to provide telecommunications service in this state and that builds or installs wireless communications transmission equipment, wireless facilities, utility poles or monopoles but that is not a wireless service provider. Wireless Infrastructure Provider does not include a special taxing district.

“Wireless Provider” as defined in A.R.S. §9-591(24) means a Cable Operator, Wireless Infrastructure Provider or Wireless Services Provider.

“Wireless Provider’s Improvements” means all improvements installed by the Wireless Provider, including, but not limited to: all elements of the Wireless Facility, all screening elements, any landscaping plants or materials, and any other elements provided by the Wireless Provider in the approved License Agreement.

“Wireless Services” as defined in A.R.S. §9-591(25) means any services that

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

“Wireless Services Provider” as defined in A.R.S. §9-591(26) means a person that provides wireless services. Wireless Services Provider does not include a special taxing district.

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

- a) Means:
 - i. A freestanding structure, such as a monopole.
 - ii. A tower, either guyed or self-supporting.
 - iii. A sign or billboard.
 - iv. Any other existing or proposed structure designed to support or capable of supporting small wireless facilities.
 - v. Does not include a utility pole.

2. USE AREAS.

Upon approval of a License Agreement, Town grants to Wireless Service Provider the right to install Wireless Facilities in the Town’s Right-of-way upon issuance of an Encroachment Permit for each Use Area as set forth below:

2.1 Limitations. Notwithstanding anything herein to the contrary, the Use Areas include and are limited to only certain areas that Wireless Provider is permitted to exclusively use and occupy (the “Exclusive Area”) and certain areas that Wireless Provider is permitted to use on a shared basis (the “Shared Area”). The Use Areas are defined by the Boundary Plan.

2.2 Use Areas Boundary. The Use Areas is the smallest geometric shape that includes the Exclusive Areas and the Shared Areas. The Use Areas exclude other parts of the Street Parcel or and all other land. Wireless Provider shall not occupy or use any other portion of the Street Parcel or adjoining lands. An approved License Agreement or any associated Encroachment Permit(s) does not allow any use by Wireless Provider of land outside the Street Parcel. If any portion of Wireless Provider’s work, improvement or equipment is to be located on other land, then such work, improvements and equipment are prohibited unless Wireless Provider first obtains from the owner of said land (including Town, if applicable) a Supplemental Parcel Agreement allowing such work, improvements and equipment.

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

2.3.1 The land area defined as “Enclosure” on the Boundary Plan to be used by Wireless Provider 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 Wireless Provider’s use and any enclosure for Wireless Provider’s use must be located outside the Street Parcel and authorized by a Supplemental Parcel Agreement.

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

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

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

2.4.2 No temporary construction area is provided by these Terms, an approved License Agreement or Encroachment Permit. Wireless Provider must obtain from Town a separate written document giving Wireless Provider permission to work in the Right-of-way, as described elsewhere herein.

2.4.3 An underground cable route (the “Signal Route”) labeled as the “Signal Route” described on the Boundary Plan from the Enclosure to the Antenna to be used by Wireless Provider solely for underground radio frequency lines between the Enclosure and the Antenna. Notwithstanding the preceding sentence, the portion of the Signal Route upon the Pole shall not be underground but shall be within the Pole. If the Boundary Plan does not show a clearly defined and correctly labeled “Signal Route” area, then no signal route area is available for Wireless Provider’s use and any signal route for Wireless Provider’s use must be separately authorized by Town.

2.5 Power and Telephone Service. Nothing herein grants permission for Wireless Provider to use any portion of power, telephone or other service routes, if any. Wireless Provider acknowledges that use of the public street Right-of-way or public utility easements for these purposes, if any, is governed by Town's normal Right-of-way rules and policies, and by the franchise agreements between the Town and the electrical and telephone service providers.

2.6 Rights in Adjacent Land. Wireless Provider's rights are expressly limited to the real property defined as the "Use Areas" an issued Encroachment Permit. 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 Town, such property shall not accrue to Wireless Provider but shall be the Town's property and not subject to the Use Areas.

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

2.8 Condition of Title. Wireless Provider shall not have power to amend, modify, terminate or otherwise change the Site Documents or create new Site Documents.

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

2.8.2 Wireless Provider shall pay, indemnify, defend and hold harmless Town and its agents and representatives of, from and against any and all claims, demands, damages, expenses, interest or penalties of any kind or nature whatsoever, including attorneys', arbitrators' and experts' fees and court costs that arise from or relate to Wireless Provider's non-compliance with the Site Documents.

2.9 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.

2.10 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, Wireless Provider's rights herein are limited to use and occupation of the Use Areas for the Permitted Uses.

2.11 Limited Rights in Use Areas. Wireless Provider's rights in the Use Areas are limited to the specific rights expressly granted in Wireless Provider's approved License Agreement.

2.12 Reserved Right and Competing Users and Activities. Notwithstanding anything herein to the contrary, Town specifically reserves to itself and excludes from any Encroachment Permit 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:

2.12.1 Competing Users. Wireless Provider accepts the risk that Town 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 Wireless Provider’s use.

2.12.2 Competing Activities. Wireless Provider accepts the risk that there may now or in the future exist upon the Use Areas all manner of work and improvements upon the Use Areas (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:

2.12.2.1 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.

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

2.12.2.3 All manner of 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.

2.12.2.4 All other uses of the Right-of-way that Town may permit from time to time.

2.12.3 Town’s Rights Cumulative. All of Town’s Reserved Rights under various provisions of the License Agreement, these Terms and Encroachment Permits shall be cumulative to each other.

2.12.4 Use Priorities. These Terms do not grant to Wireless Provider or establish for Wireless Provider any exclusive rights or

priority in favor of Wireless Provider to use the Use Areas. Wireless Provider shall not obstruct or interfere with or prevent any Competing User from using the Use Areas.

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

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

2.12.5.2 All other factors Town may consider relevant, whether or not mentioned in the License Agreement, these Terms and Encroachment Permit(s).

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

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

2.12.6.1 Wireless Provider shall perform the Relocation Work at its own expense when required by Town's town manager or designee.

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

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

2.12.6.4 Town and not Wireless Provider shall be entitled to use any of Wireless Provider's facilities that

are abandoned in place or that are not relocated on Town's request.

2.12.6.5 All Relocation Work shall be subject to and comply with all other provisions of the License Agreement.

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

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

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

2.13 Third Party Permission. There may be portions of the Right-of-way or other areas that for any reason have limited Right-of-way dedications or that have regulatory use restrictions imposed by a third party ("Third Party"). Areas subject to such restrictions or regulations by Third Parties are referred to as "Third Party Areas" and communications equipment may not be built without permission from the Third Party or Third Parties that have property rights or

regulatory authority over a specific Third Party Area. Wireless Provider's right to use any Use Areas shall be suspended, but not its obligations with respect thereto, during any period that a Third Party Permission is not in effect.

3. DURATION; EXTENSIONS.

3.1 Term. The original term of each License Agreement shall be for a period of ten (10) years commencing on the effective date stated therein ("Initial Term"). The Term of any associated Encroachment Permits issued to Wireless Provider shall be the same as Wireless Provider's approved License Agreement.

3.2 Extensions. The term of the License Agreement may be extended for one (1) additional ten (10) year period ("Extension Term") subject to consent by Town and Wireless Provider, which either may withhold in its sole and absolute discretion. Both Town and Wireless Provider shall be deemed to have elected to extend unless Town or Wireless Provider, respectively, gives notice to the contrary to the other at least ninety (90) days prior to the end of the initial Term.

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

3.4 Town's Right to Cancel. Notwithstanding anything contained herein to the contrary, Town shall have the unconditional right, with or without cause, to terminate any Encroachment Permit for reasons including but not limited to street widening, Right-of-way abandonment, or development that may impact the location of the site, upon one hundred eighty (180) days' prior written notice given at any time after the first one hundred eighty (180) days.

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

3.6 Removal and Restoration Obligations. Upon expiration or termination of any License Agreement or Encroachment Permit, or any abandonment of any Wireless Facilities, Wireless Provider shall remove its Wireless Facilities from the Right-of-way, at its sole cost and expense as provided in Section 12.4 hereto.

4. WIRELESS PROVIDER'S PAYMENTS.

Wireless Provider shall make payments to Town as follows:

4.1 Use Fee Items. Wireless Provider shall pay to Town each of the following separate and cumulative amounts (collectively the "Use Fees"):

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

4.1.2 An amount (the "Application Fee") based on Wireless Provider's application and permit review and other costs as set out below.

4.1.3 An amount (the "Violation Use Fee") based on certain breaches by Wireless Provider of the License Agreement as set out below.

4.1.4 All other amounts required by the License Agreement.

4.2 Base Use Fee Amount. The amount of Base Use Fee Wireless Provider shall pay to Town 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 Town's town council.

4.3 Application Fee Amount. The amount of the Application Fee for Small Wireless Facilities under A.R.S. § 9-592 shall be Seven Hundred Fifty Dollars (\$750.00) and the Application Fee for wireless sites under A.R.S. § 9-594 shall be One Thousand Dollars (\$1000.00). Nothing herein shall prevent the Town from charging any other applicable fees ordinarily charged by the Town for review of plans, issuance of permits, and inspection of Wireless Provider's work upon the Use Areas (including, without limitation, encroachment permits, traffic control fees, technology fees) as set out in the then current fee schedule as it may be amended from time to time by Town's town council.

4.4 Use Fees Cumulative. All items of Use Fees shall be cumulative and separate from each other.

4.5 Use Fee Schedule. Provider shall pay all Use Fees at the times and in the amounts specified by Town's normal processes. Town's failure to collect any item of the Use Fees does not waive Wireless Provider's liability for such Use Fee, nor shall such failure be deemed a waiver by the Town to collect such Use Fee thereafter.

4.6 Letter of Credit. The Initial Letter of Credit amount shall be based upon the Wireless Provider's good faith projection of the number of sites to be constructed within the Town of Fountain Hills during the current calendar year.

The Initial Letter of Credit shall be received by the Town before any construction and encroachment permits are issued as follows:

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

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

4.6.3 The letter of credit is a security deposit for Wireless Provider's performance of all of its obligations under these Terms within the Town of Fountain Hills.

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

4.6.5 Wireless Provider shall provide and maintain the letter of credit during the entire term of the License Agreement as follows:

4.6.5.1 Wireless Provider shall cause the original letter of credit to be delivered to Town's Development Services Director.

4.6.5.2 Wireless Provider shall pay all costs associated with the letter of credit, regardless of the reason or manner such costs are required.

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

4.6.6 Town 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:

4.6.6.1 Wireless Provider fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by these Terms.

4.6.6.2 Wireless Provider fails to make monetary payments as required by these Terms.

4.6.6.3 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.

4.6.7 Town shall also have such additional rights regarding the letter of credit as may be provided elsewhere in the License Agreement.

4.7 Late Fees. Any fee payable under this Agreement is deemed paid only when Town actually receives good cash payment. Should any fee not be paid on or before the date due, a late fee shall be added to the amount due in the amount of the greater of ten percent (10%) of the amount due, or One Hundred Dollars (\$100.00). Furthermore, any 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. Wireless Provider expressly agrees that the foregoing represent fair and reasonable estimates by Town and Wireless Provider of Town's costs (such as accounting, administrative, legal and processing costs, etc.) in the event of a delay in payment of the fee. Town shall have the right to allocate payments received from Wireless Provider among Wireless Provider's obligations.

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

5. USE RESTRICTIONS.

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

5.1 Permitted Uses. Wireless Provider shall use the Use Areas solely for the Permitted Uses and shall conduct no other activity at or from the Use Areas without Town's prior written consent, which may be withheld in Town's sole and absolute discretion.

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

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

5.3.1 All antennas, including the antenna's exposed elements, are located inside an enclosure of not more than six (6) cubic feet in volume, and

5.3.2 All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume.

5.3.3. The following ancillary equipment is not included in the equipment volume: electric meter, concealment elements, telecom demarcation box, grounding equipment, power transfer switch, cutoff switch, and vertical cable runs.

5.4 Communications Operations Restriction. Pursuant to A.R.S. 9-592(F)(3), Wireless Provider shall not install, operate, or allow the use of equipment, methodology or technology that interferes or is likely to interfere with the optimum effective use or operation of Town's existing or future fire, emergency or other communications equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Wireless Provider shall immediately discontinue using the equipment, methodology or technology that causes the interference until Wireless Provider takes corrective measures to alter the Communications Equipment to eliminate such interference. Any such corrective measures shall be made at no cost to Town. Wireless Provider shall give to Town advance written notice containing a list of the radio frequencies Wireless Provider is using at the Use Areas and shall give advance written notice to Town of any change in frequencies.

5.5 Other Equipment. Wireless Provider shall not disturb or otherwise interfere with any other antennas or other equipment Town or an authorized third party may have already installed or may yet install upon the Street Parcel.

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

5.6.1 Wireless Provider shall install and thereafter maintain the following signs and other markings as reasonably determined by Town from time to time:

5.6.1.1 All signs and markings required for safe use of the Use Areas by Town, Wireless Provider and other persons who may be at the Use Areas at any time for any reason.

5.6.1.2 Any signage Town may request directing parking, deliveries and other vehicles and other users to comply with this License Agreement.

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

5.6.2 All signage not expressly allowed by these Terms is prohibited.

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

5.6.4 Wireless Provider shall design, make, install and maintain all signage in a first class, professional manner without broken panels, faded or peeling paint or other damage. Town reserves the right to require Wireless Provider to install, at Wireless Provider's cost, new or updated signage if the existing signage is not compliant with this Agreement.

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

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

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

5.8 Noise. Except during construction permitted under the License 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 is compliant with Section 11-1-7 of the Town Code and does not exceed the ambient noise level at the boundary of the Street Parcel. The preceding sentence does not apply to use of normal, properly maintained construction equipment used as permitted by the approved License Agreement or permit issued to Wireless Provider by the Town, 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.

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

5.10 Standards of Service. Wireless Provider shall operate the Use Areas in a first-class manner, and shall keep the Use Areas attractively maintained, orderly, clean, neat and tidy at all times. Wireless Provider shall not allow any person or persons in or about the Use Areas related to Wireless Provider's operations who shall fail to be clean, courteous, efficient and neat in appearance.

5.11 Wireless Provider's Agent. Wireless Provider shall at all times retain on call available to Town by telephone an active, qualified, competent and experienced person to supervise all activities upon the Use Areas and operation of the Communications Equipment. Wireless Provider's agent shall be authorized to represent and act for Wireless Provider in matters pertaining to all emergencies and the day-to-day operation of the Right-of-way and all other matters affecting a License Agreement or Encroachment Permit. Wireless Provider shall also provide notice to Town of the name, street address, electronic mail address, and regular and afterhours telephone number of a person to handle Wireless Provider's affairs and emergencies at the Right-of-way. Any change shall be given in writing to Town's Development Services Director in the manner stated for notices required herein.

5.12 Coordination Meetings. Wireless Provider shall meet with Town and other Right-of-way users from time to time as requested by Town to coordinate and plan construction on the Use Areas and all matters affected by these Terms.

5.13 Toxic Substances. Wireless Provider's activities upon or about the Use Areas shall be subject to the following regarding any hazardous or toxic substances, waste or materials or any substance now or hereafter subject to

regulation under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively “Toxic Substances”):

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

5.13.2 Within twenty-four (24) hours after discovery by Wireless Provider of any Toxic Substances, Wireless Provider shall report such Toxic Substances to Town in writing. Within fourteen (14) days thereafter, Wireless Provider shall provide Town with a written report of the nature and extent of such toxic substances found by Wireless Provider.

5.13.3 Disturbance of Toxic Substances. Prior to undertaking any construction or other significant work, Wireless Provider shall cause the Use Areas to be inspected to prevent disturbance of potential asbestos or other Toxic Substances. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Wireless Provider shall cause the contractor or other person performing such work to give to Town written notice by the method described in these Terms to the effect that the person will inspect for Toxic Substances, will not disturb Toxic Substances, and will indemnify, defend and hold Town harmless against any disturbance in Toxic Substances in the course of the contractor’s or other person’s work. Wireless Provider shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Wireless Provider in connection with the Use Areas to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services. Wireless Provider shall promptly deliver to Town copies of all reports or other information regarding Toxic Substances.

5.14 Required Operation. During the entire term of the License Agreement and associated Encroachment Permit(s), and any renewals or extensions thereof, Wireless Provider shall actively and continuously operate the Communications Equipment twenty-four (24) hours per day, seven (7) days per week, for the Permitted Uses. Notwithstanding anything contained in this paragraph to the contrary, the operation requirements of this paragraph shall be

effective commencing on the completion of the Project and shall continue through the date the License Agreement terminates or expires for any reason. In the event of relocation of the Communications Equipment or damage to the Use Areas severe enough that the Communications Equipment cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during the time specified by these Terms for accomplishing repair of such damage or relocation of the Communications Equipment. Wireless Provider may temporarily cease operating the Communications Equipment for short periods necessary to test, repair, service or upgrade the Communications Equipment. Notwithstanding the foregoing to the contrary, any suspension in operations, whether or not authorized pursuant to the License Agreement, shall not serve to extend any Term of the License Agreement.

5.15 Actions by Others. Wireless Provider shall be responsible to ensure compliance with the License Agreement by all persons using the Right-of-way through or under Wireless Provider.

6. WIRELESS PROVIDER'S IMPROVEMENTS.

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

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

6.2 Zoning and Similar Approval Process. The zoning processes, building permit processes, Right-of-way management policies and similar regulatory requirements that apply to Wireless Provider's Improvements are completely separate from the plans approval processes set forth in these Terms. Wireless Provider's satisfaction of any requirement set forth these Terms does not substitute for compliance with any regulatory requirement. Wireless Provider's satisfaction of any regulatory requirement does not substitute for compliance with any requirement of these Terms. Wireless Provider must make all submittals and communications regarding the requirements of these Terms through Town's Development Services Director and not through other staff. Wireless Provider shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Use Areas. Wireless Provider bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such rezoning and other approvals. Notwithstanding anything in this paragraph to the contrary, to the extent regulatory requirements and requirements of these Terms are identical, compliance with regulatory requirements shall constitute compliance with these Terms and vice versa.

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

6.3 Relationship of Plans Approval to Regulatory Processes. Wireless Provider's submission of plans under these Terms, Town's approval of plans for purposes of these Terms, and the plans approval process herein shall be separate and independent of all development, zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply as provided under state law, in addition to the requirements of these Terms and its approvals. BUILDING PERMITS, ZONING CLEARANCES, OR ANY OTHER GOVERNMENTAL REVIEWS OR ACTIONS DO NOT CONSTITUTE APPROVAL OF ANY PLANS FOR PURPOSES OF THE LICENSE AGREEMENT.

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

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

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

6.5.2 Any changes to utility facilities shall be strictly limited to the Use Areas, shall not affect utilities used by Town or any authorized users thereof, and shall be undertaken by Wireless Provider at its sole cost and expense.

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

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

6.5.5 All specifications set forth in the Town of Fountain Hills's Design Standards for Small Wireless Facilities in the Right-of-Way, attached here to as Exhibit "A."

6.6 Approval Required. Wireless Provider shall not construct any Wireless Provider's Improvements (including work on adjacent public lands, if applicable) without having first received an executed License Agreement, written plans approval from Town and any and all permits deemed necessary by the Town. 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 Wireless Provider to Town. 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.

6.7 Effect of Plans Approval. Wireless Provider shall submit engineering and construction plans to the Town for review and approval. Town's approval of plans submitted shall be for purposes of these Terms only and shall constitute irrevocable approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. Town shall not reject subsequent plans to the extent the matter to which Town objects was plainly shown on plans previously approved by Town. However, Town 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.

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

6.8.1 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 Wireless Provider's Improvements.

6.8.2 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 these Terms. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

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

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

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

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

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

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

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

6.10 Cost of Wireless Provider Improvements. All Wireless Provider's Improvements shall be designed and constructed by Wireless Provider at Wireless Provider's sole cost and expense, including without limitation any alteration or other change to Town's equipment or other improvements or property that may occur. In no event shall Town be obligated to compensate Wireless Provider in any manner for any of Wireless Provider's Improvements or other work provided by Wireless Provider during or related to the term of any

approved License Agreement and Encroachment Permit(s). Wireless Provider shall timely pay for all labor, materials, work, and all professional and other services related thereto and shall pay, protect, indemnify, defend and hold harmless Town and Town's employees, officers, contractors and agents against all claims related to such items. Wireless Provider shall bear the cost of all work required from time to time to cause the Use Areas and Town's adjoining property (if directly affected by Wireless Provider's work) to comply with local zoning rules, the Americans with Disabilities Act, building codes and all similar rules, regulations and other laws if such work is required because of work performed by Wireless Provider, by Wireless Provider's use of the Use Areas, or by any exercise of the rights granted to Wireless Provider under this License Agreement or associated Encroachment Permit(s).

6.11 Improvement Quality. Any and all work performed on the Use Areas by Wireless Provider 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 Wireless Provider's Improvements shall be high quality, safe, fire resistant, modern in design, and attractive in appearance, all as approved by Town through the plans approval processes described in these Terms in addition to any zoning, building code or other regulatory processes that may apply.

6.12 Ownership of Wireless Provider's Improvements. All Wireless Provider's Improvements (including without limitation poles and lights) except the Communications Equipment shall be and become part of the real property of Town as the same is constructed or installed.

6.13 Damage During Work. Upon performing any work upon the Right-of-way, Wireless Provider shall simultaneously restore the Right-of-way to its prior condition, as directed by Town 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.

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

6.12.1 Wireless Provider shall provide and deliver to Town a replacement pole, including mast arm, so that a replacement is immediately available to Town in case the original pole is damaged.

6.12.2 If Town uses a replacement pole, then Wireless Provider shall provide another replacement pole.

6.12.3 Upon installation of a replacement pole, the Town will determine if the original pole, mast arm(s), signal head(s), and light fixture(s) shall be delivered by Wireless Provider to the Town's Corporation Yard or if the Wireless Provider shall dispose of the original pole, mast arm, signal head and light fixture.

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

6.15 Coordination with Encroachment Permit. The Street Parcel is located in Town's public street Right-of-way. Wireless Provider shall obtain encroachment permits at Wireless Provider's expense as follows:

6.15.1 Wireless Provider shall perform no construction work in the Right-of-way without obtaining from Town a permit giving permission to work in the Right-of-way.

6.15.2 Wireless Provider shall not alter or modify its antennas, wireless equipment or any improvements without submitting plans or drawings of the proposed alteration or modification to Town and obtaining approval from Town's Development Services Director.

6.15.3 Wireless Provider shall not perform any work on its own antennas or wireless equipment without first obtaining from Town an encroachment permit giving it permission to work in the Right-of-way.

6.15.4 Wireless Provider shall not in any way obstruct pedestrian or vehicular traffic within the Right-of-way without first obtaining from Town a permit giving permission to obstruct traffic.

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

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

6.18 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 Town 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 Wireless Provider's work.

7. RF SAFETY FOR TOWN'S EMPLOYEES.

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

Furthermore, as Town's employees, agents, and representatives must have uninterrupted and safe access to the Right-of-way and all structures located thereon, Wireless Provider must comply with at least one of the following safety protocols:

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

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

8. MAINTENANCE AND UTILITIES.

Except as expressly provided below, Wireless Provider shall be solely responsible for all maintenance, repair and utilities for the Use Areas during the term of an approved License Agreement and associated Encroachment Permit(s). Without limitation, Wireless Provider shall perform the following:

8.1 Maintenance by Town. Town has no maintenance or repair obligations for the Communications Equipment or other Wireless Provider's Improvements.

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

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

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

8.5 Right of Inspection. Town shall be entitled to inspect all construction, reconstruction or installation work and to make such tests as it deems necessary to ensure compliance with the terms herein and any applicable laws and regulations. All Town plans reviews, inspections, standards and other rights and actions with relation to Wireless Provider's Improvements are for Town's sole and exclusive benefit and neither Wireless Provider nor any other person shall rely thereon or have any rights related thereto. The preceding sentence does not prevent Wireless Provider from relying on consents, permits or approvals Town may grant based on Town's plans, reviews, and inspections. This right of access is in addition to access rights for Town inspectors or other employees and officers acting within their legal authority.

8.6 Construction Notification. Town may establish requirements for Wireless Provider to notify nearby residents prior to construction.

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

9. BREACH BY WIRELESS PROVIDER.

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

9.1 Events of Default. All License Agreements and Encroachment Permits are approved upon the condition that each and every one of the following events herein shall be deemed an "Event of Default" by Wireless Provider of Wireless Provider's material obligations under these Terms:

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

9.1.2 If Wireless Provider shall fail to operate the Communications Equipment (except during specific periods expressly excused herein) for a period of five (5) consecutive days or a total of thirty (30) days within any twelve (12) month period.

9.1.3 If Wireless Provider shall fail to maintain any insurance required under these Terms. Notwithstanding the preceding sentence, such failure shall not be a default if, within ten (10) days after notice from Town, Wireless Provider provides to Town the required insurance and the required evidence thereof. Such

insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by these Terms.

9.1.4 If the Wireless Provider's right to use a Utility Pole expires or is terminated for any reason.

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

9.1.6 If Wireless Provider shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Wireless Provider's or such other person's property shall be made for the benefit of creditors or if Wireless Provider or such other person dies or is not regularly paying its debts as they come due (collectively a "Wireless Provider 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 Town for funds or other performance under the instrument and Wireless Provider fails to cause the issuer, or some other person, to honor the request within ten (10) days after Town notifies Wireless Provider that such request has not been honored.

9.1.8 If Wireless Provider 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 does not cure such failure within thirty (30) days.

9.1.9 If Town shall be exposed to any liability, obligation, damage, cost, expense, or other claim of any description, whether or not asserted, unless Wireless Provider gives immediate notice to Town of Wireless Provider's commitment to indemnify, defend and hold Town harmless against such claim, and Wireless Provider does in fact promptly commence and continue to indemnify, defend and hold Town harmless against such claim.

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

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

- h. 9.1.11.1 Another failure to comply with any provision of these Terms during the following thirty (30) day period.
- i. 9.1.11.2 Three (3) or more failures to comply with any provision of these Terms during any ninety (90) day period.
- j. 9.1.11.3 Six (6) or more failures to comply with any provision of these Terms during any twelve (12) month period.

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

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

9.2.1 Terminate the License Agreement or any or all Encroachment Permits due to Wireless Provider's breach or for any other reason, however, such termination does not terminate Wireless Provider's obligations arising during the time simultaneous with or prior to or the termination, and in no way terminates any of Wireless Provider's liability related to any breach of these Terms.

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

9.2.3 Abate at Wireless Provider's expense any violation of these Terms.

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

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

9.2.6 Require that the Wireless Provider remedy any and all

violations and pay any and all outstanding fees in full (before accepting applications for new Encroachment Permits).

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

9.3 Violation Use Fee. Wireless Provider and Town agree that Wireless Provider's failure to comply with the provisions herein will result in damages to Town, including but not limited to expenses related to administrative costs, staff time, field work and inspections, legal services, etc. Wireless Provider's failure to comply with the provisions herein will result in damages in an amount that is and will be impracticable to determine. Therefore, the parties have agreed that Wireless Provider shall pay the Violation Use Fee set out below in accordance with the following (the "Violation Fee Provisions"):

9.3.1 Violation Use Fee is only intended to remedy damages that Town suffers because of Wireless Provider's breach of this Agreement. Wireless Provider's payment of Violation Use Fee does not in any way excuse any breach by Wireless Provider of these Terms or limit in any way Town's obtaining any other legal or equitable remedy provided by these Terms or otherwise for such breach. For example, Wireless Provider's obligation to pay Violation Use Fee does not in any way detract from Wireless Provider's indemnity and insurance obligations under these Terms, which shall apply according to their terms in addition to Wireless Provider's obligation to pay Violation Use Fee.

9.3.2 Town may elect to draw upon the letter of credit to collect the Violation Use Fee.

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

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

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

9.3.4 Violation Use Fees shall be assessed as follows:

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

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

9.3.4.2.1 Wireless Provider shall have thirty (30) days after the notice to pay the Violation Use Fee or give Town notice contesting the assertion of noncompliance.

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

10. BREACH BY TOWN.

Notwithstanding anything in these Terms to the contrary, if Town at any time is required to pay to Wireless Provider any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Wireless Provider to Town that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Town shall not be in default so long as Town 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.

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

11. NON-WAIVER.

Wireless Provider acknowledges Wireless Provider's unconditional obligation to comply with these Terms herein. No failure by Town to demand any performance

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

12. TERMINATION.

The following provisions shall apply at the expiration of the term or earlier termination of each License Agreement and Encroachment Permit:

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

12.2 Delivery of Possession. Wireless Provider shall cease using the Use Areas associated with the expired or terminated License Agreement or Encroachment Permit. Wireless Provider shall, without demand, peaceably and quietly quit and deliver up the Use Areas to Town 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.

12.3 Confirmation of Termination. Upon expiration or termination of a License Agreement or Encroachment Permit for any reason, Wireless Provider shall provide to Town upon demand recordable disclaimers covering the Use Areas executed and acknowledged by Wireless Provider and by all persons claiming through this License Agreement, Encroachment Permit or Wireless Provider any interest in or right to use the Use Areas.

12.4 Removal of Improvements. Wireless Provider shall remove all Communications Equipment and restore the Use Areas including Utility Pole, mast arms, luminaires, or wireless support structure to its prior condition, or to a condition matching Town's surrounding land and improvements, as directed by Town, at Wireless Provider's expense prior to normal expiration of the term of a License Agreement or Encroachment Permit; or within sixty (60) days after early termination of a License Agreement or Encroachment Permit. Without limitation, such work shall include revegetation and appropriate irrigation systems for revegetated areas. Notwithstanding anything in the License Agreement and these Terms to the contrary, Town may elect to require Wireless Provider to leave any or all construction or other items (except the Communications Equipment) in place, and all such items shall be owned by Town. Unless Town 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.

12.5 Prior Improvements. This article also applies to any improvements that Wireless Provider may have made to the Use Areas.

13. INSURANCE.

During the entire term of any License Agreement or Encroachment Permit, Wireless Provider shall insure its property and activities at and about the Use Areas and shall provide insurance and indemnification as follows:

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

13.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for each occurrence, a limit of Ten Million and No/100 Dollars (\$10,000,000.00) for products and completed operations annual aggregate, and a limit of Ten Million and No/100 Dollars (\$10,000,000.00) 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 License Agreement. The policy will cover Wireless Provider's liability under the indemnity provisions set forth in these Terms. The policy shall contain a "separation of insured's" clause.

13.1.2 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 Wireless

Provider's use of the Right-of-way. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

13.1.3 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.

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

13.1.5 Other Insurance. Any other insurance Town may reasonably require for the protection of Town and Town's employees, officials, representatives, officers and agents (all of whom, including Town, are collectively "Additional Insureds"), the Right-of-way, surrounding property, Wireless Provider, 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.

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

13.3 Form of All Insurance. All insurance provided by Wireless Provider with respect to the Right-of-way, whether required in these Terms or not, shall meet the following requirements:

13.3.1 "Occurrence" coverage is required.

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

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

13.3.4 Within five (5) business days of receiving a written request from the Town, Wireless Provider shall provide copies of insurance certificates, insurance policies, formal endorsements or other documentation acceptable to Town that all insurance coverage required herein is provided.

13.3.5 Wireless Provider's insurance shall be primary insurance with respect to claims arising out of Wireless Provider's operations, activities and obligations set forth in these Terms.

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

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

13.3.7.1 Wireless Provider shall be solely responsible for any self-insurance amount or deductible.

13.3.7.2 Such amounts shall not exceed in total One Hundred Thousand Dollars (\$100,000.00) per loss. At such times as Wireless Provider's net worth is more than One Hundred Million Dollars (\$100,000,000.00), such limit shall be One Million and No/100 Dollars (\$1,000,000.00).

13.3.7.3 Any self-insured exposure shall be deemed to be an insured risk under this License Agreement.

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

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

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

13.3.9 All policies must require the insurer to provide Town with at least thirty (30) days' prior notice of any cancellation. The insurer's duty to notify Town 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."

13.3.10 All policies shall require that notices be given to Town in the manner specified for notices to Town set forth in the License Agreement and these Terms.

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

13.5 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Town. 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.

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

13.7 Risk of Loss. Wireless Provider assumes the risk of any and all loss, damage or claims related to Wireless Provider's use of the Right-of-way or other property of Town, Wireless Provider or third parties throughout the term of any License Agreement or Encroachment Permit. Wireless Provider shall be responsible for any and all damage to its property and equipment related to the License Agreement or Encroachment Permit.

13.8 Insurance to be Provided by Others. Wireless Provider shall cause its contractors or other persons occupying, working on or about, or using the Right-of-way pursuant to these Terms to be covered by their own or Wireless Provider's insurance as required by these Terms. The required policy limits for commercial general liability insurance provided by such persons shall be One Million Dollars (\$1,000,000) for each occurrence, One Million Dollars

(\$1,000,000) for products and completed operations annual aggregate, and Two Million Dollars (\$2,000,000) general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the Right-of-way (such as Wireless Provider's consulting design engineers).

14. INDEMNITY.

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

15. CONDEMNATION.

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

15.1 Termination for Condemnation. The Encroachment Permit for the Use Area 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 Town reasonably determines that the Use Areas continue to be suitable for Wireless Provider to conduct the Permitted Uses, Town may elect to cause the Encroachment Permit 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 Wireless Provider reasonably determines that the Use Areas are not suitable for Wireless Provider to conduct the Permitted Uses, then the Encroachment Permit shall terminate.

15.2 Condemnation Proceeds. Wireless Provider hereby assigns and transfers to Town Wireless Provider'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"). Wireless Provider shall execute and deliver to Town assignments or other instruments requested by Town confirming such assignment and transfer. Wireless Provider shall immediately pay to Town any Condemnation Proceeds Wireless Provider may receive. The Condemnation Proceeds shall not include relocation benefits, if any, awarded specifically to Wireless Provider to cover expenses of relocating Wireless Provider's business located at the Use Areas at the time of the condemnation, or any compensation specifically awarded to Wireless Provider for any taking of the Communications Equipment itself. Any repair, relocation or similar costs relating to the Communications Equipment shall be borne by Wireless Provider.

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

16. DAMAGE TO OR DESTRUCTION OF 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"):

16.1 Damage to Wireless Provider's Improvements. Wireless Provider shall commence restoring the Casualty Damage to Wireless Provider's

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

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

17. WIRELESS PROVIDER'S RECORDS.

During the entire term of any License Agreement, Wireless Provider shall keep records and provide information to Town as follows:

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

17.1.1 The status of the construction, repair or restoration of Wireless Provider Improvements.

17.1.2 Information indicating whether Town or Wireless Provider is in compliance with the terms herein.

17.2 Records Inspection. At Wireless Provider's expense, Wireless Provider shall:

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

17.2.2 Make the records of Covered Information (and reasonable accommodations for Town's audit and inspection) available to Town at Wireless Provider's offices in Maricopa County, Arizona.

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

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

17.4 Record Media Included. Town's and Wireless Provider's rights and obligations regarding the Covered Information apply regardless of the type of media, materials, or data repositories that may contain the Covered Information.

Town 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.

17.5 Reports. Wireless Provider shall deliver to Town written reports (and, if requested by Town, a presentation to Town's governing council or designee) covering such Covered Information as Town may request from time to time.

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

18. COMPLIANCE WITH LAW.

Wireless Provider shall perform its obligations under the License Agreement (including these Terms) and any Encroachment Permit 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, Wireless Provider shall comply with all and each of the following:

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

18.1.1 Wireless Provider acknowledges nothing set forth herein or by approval of a License Agreement or issuance of an Encroachment Permit constitutes, and Town has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to Wireless Provider with regard to) any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the Town of Fountain Hills or any other governmental body upon or affecting Wireless Provider, the Use Areas, or the Street Parcel or Wireless Provider's use of the Use Areas, the Street Parcel or the Right-of-way.

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

18.1.3 Town by approving this License Agreement or any Encroachment Permit cannot, and has not, relinquished or limited any right of condemnation or eminent domain over the Right-of-way or any other property related to the License Agreement or Encroachment Permit, or within the Right-of-way.

18.1.4 The approval of this License Agreement or issuance of any Encroachment Permit cannot and does not impair Town's, power to enact, apply or enforce any laws or regulations, or exercise any governmental powers affecting in any way Wireless Provider, the Use Areas, the Street Parcel, or the Right-of-way.

18.1.5 Town's rights and remedies under this License Agreement and any Encroachment Permit for Wireless Provider's failure to comply with all applicable laws supplement and are in addition to and do not replace otherwise existing powers of the Town of Fountain Hills or any other governmental body.

18.1.6 Wireless Provider's rights under this License Agreement and any Encroachment Permit 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 Wireless Provider's use thereof. Wireless Provider shall comply with all of the foregoing.

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

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

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

18.2.2 Wireless Provider shall maintain records of radio frequency measurements and Communications Equipment performance in accordance with the FCC Rules.

18.2.3 Wireless Provider shall also evidence and demonstrate its compliance with the FCC Rules in such manner and at such intervals as the Town of Fountain Hills Zoning Ordinance and other applicable laws and regulations may mandate.

18.3 Use Area Regulations. Town reserves the right to adopt, amend and enforce against Wireless Provider rules and regulations governing the operation of the Street Parcel, including the Use Areas, Wireless Provider's activities

therein and thereon, and the public areas and facilities used by Wireless Provider in connection therewith.

18.4 Taxes, Liens and Assessments. In addition to all other amounts herein provided and to the extent consistent with applicable law, Wireless Provider shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of any License Agreement or Encroachment Permit may be levied upon or assessed upon or with respect to Wireless Provider's use of the Right-of-way, the operations conducted therein, any amounts paid or other performances required by these Terms by either party, and all possessory interest in the Right-of-way and Wireless Provider's improvements and other property thereon. Wireless Provider shall pay, indemnify, defend and hold harmless Town 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.

18.5 Permits. Nothing in these Terms relieves Wireless Provider of the obligation to obtain permits, licenses and other approvals from Town 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, encroachment permits, traffic control permits and the like.

19. ASSIGNABILITY.

The License Agreement or Encroachment Permit(s) are not assignable by Wireless Provider (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

19.1 Assignments Affected. Every assignment of any of Wireless Provider's interest in the Right-of-way, the License Agreement, Encroachment Permit(s) or these Terms or any of Wireless Provider's rights or interests hereunder is prohibited unless Wireless Provider first receives from Town notice of Town's consent to the assignment, where Town's consent to such assignment not to be unreasonably withheld, conditioned, or delayed. All references in these Terms to assignments by Wireless Provider or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to such transactions, circumstances and conditions:

19.1.1 Any voluntary or involuntary assignment, conveyance or transfer of Wireless Provider's right to use the Right-of-way under this License Agreement or any interest or rights of Town under this License Agreement, in whole or in part.

19.1.2 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 Wireless Provider's rights to use the Right-of-way (collectively "Liens").

19.1.3 Any assignment by Wireless Provider of any interest in the License Agreement or Encroachment Permit(s) for the benefit of creditors, voluntary or involuntary.

19.1.4 A Wireless Provider Insolvency.

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

19.1.6 The occurrence of any of the foregoing with respect to any assignee or other successor to Wireless Provider.

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

19.2.1 Complete Assignment of License Agreement and Encroachment Permits. Wireless Provider's complete assignment of all of Wireless Provider's rights and Interests in the Right-of-way, the approved License Agreement and all Encroachment Permits to a single assignee who meets all of the following requirements, as determined by Town in Town's reasonable discretion (a "Qualified Operator"):

19.2.1.1 The assignee has experience, management, credit standing and financial capacity and other resources equal to or greater than Wireless Provider's and adequate to successfully perform the obligations set forth herein.

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

19.2.1.3 The assignee assumes all of Wireless Provider's obligations herein.

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

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

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

19.2.4 Common Ownership Transfer. Wireless Provider's complete assignment of all of Wireless Provider's rights and interests in the Right-of-way, the approved License Agreement and Encroachment Permits to single assignee who is and remains a wholly owned subsidiary of Wireless Provider's sole owner as of the date of the License Agreement (or a wholly owned subsidiary of a wholly owned subsidiary of Wireless Provider's sole owner as of the date of the License Agreement).

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

19.3.1 Except for the sale of stock, Wireless Provider shall provide to Town a complete copy of the document assigning its interests, or other such documentation acceptable to the Town.

19.3.2 Each assignee must execute an assumption of the License Agreements and/or the Encroachment Permits in form acceptable to Town.

19.3.3 Each Pre-approved Assignment must satisfy all other requirements of these Terms pertaining to assignments.

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

19.5 Effect of Assignment. Prior to any effective assignment, each assignee must execute an assumption of each License Agreement and Encroachment Permit in the form attached hereto as Exhibit "C." No action or inaction by Town shall be deemed a waiver of the prohibition on assignments or any other provision herein, or the acceptance of the assignee, Wireless Provider or occupant as Wireless Provider, or a release of Wireless Provider from the further performance by Wireless Provider of the provisions of these Terms. Consent by Town to an assignment shall not relieve Wireless Provider from obtaining Town's consent to any further assignment. No assignment shall release Wireless Provider from any liability hereunder.

19.6 Enforceability after Assignment. No consent by Town shall be deemed to be a novation. Town's consent to any assignment does not in any way expand or modify the terms set forth in these Terms or waive, diminish or

modify any of Town's rights or remedies under the License Agreement or any Encroachment Permit. The terms set forth in these Terms shall be enforceable against Wireless Provider and each successor, partial or total, and regardless of the method of succession, to Wireless Provider's interest hereunder. Each successor having actual or constructive notice of the License Agreement, these Terms or any Encroachment Permit shall be deemed to have agreed to the preceding sentence.

19.7 Grounds for Refusal. Except for the Preapproved Assignments, no assignment of the License Agreement or any Encroachment Permit by Wireless Provider is contemplated or bargained for. Without limitation, Town has the right to impose upon any consent to assignment such conditions and requirements as Town may deem appropriate.

19.8 Consent to Assignments. Wireless Provider shall attach to each Pre-approved Assignment a copy of Wireless Provider's notice to Town of the Pre-approved Assignment and other required documents. Wireless Provider shall attach to each other assignment, a copy of Town's notice to Wireless Provider of Town's consent to the assignment. These Terms shall continue to be enforceable according to its terms in spite of any provisions of any documents relating to an assignment.

19.9 Assignment Fee. Wireless Provider shall pay to Town 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 Town grants such request.

20. MISCELLANEOUS.

The following additional provisions apply to these Terms:

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

20.2 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 the License Agreement and issued Encroachment Permits.

20.3 Time of Essence. Time is of the essence of each and every provision of the License Agreement and issued Encroachment Permits.

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

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

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

20.5 Conflicts of Interest. No officer, representative or employee of Town shall have any direct or indirect interest in the License Agreement or any Encroachment Permit, nor participate in any decision relating to the License Agreement or any Encroachment Permit that is prohibited by law. Notwithstanding the foregoing, pursuant to A.R.S. § 38-511, the Town of Fountain Hills may cancel the License Agreement or any Encroachment Permit, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the License Agreement or associated Encroachment Permits on behalf of the Town is, at any time while the License Agreement or Encroachment Permits is in effect, or any extension thereof, an employee, agent or consultant to Wireless Provider in any capacity.

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

20.7 Nonliability of Officials and Employees. No official, representative or employee of Town 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 Town or for any amount which may become due to any party or successor, or with respect to any obligation of Town or otherwise under the terms of any License Agreement or related to any License Agreement or Encroachment Permit.

20.8 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid or a national overnight express courier (such as Federal Express or UPS) to the addresses set forth in the License Agreement and to the Town as follows:

If to Town: Town of Fountain Hills
 16705 E. Avenue of the Fountains
 Fountain Hills, AZ 85268
 Attn: Town Manager

Copy to: Town of Fountain Hills
 16705 E. Avenue of the Fountains
 Fountain Hills, AZ 85268
 Attn: Development Services Director

Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
Attn: Town Attorney

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 (i) if by registered or certified mail shall be deemed to be complete three (3) days (excluding Fridays, Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail or (ii) if by overnight courier upon receipt.

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

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

20.11 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 the License Agreement.

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

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

20.14 Attorneys' Fees. If any action, suit or proceeding is brought by either party hereunder to enforce the License Agreement or any issued Encroachment Permit or for failure to observe any of the covenants of the License Agreement, these Terms or any issued Encroachment Permit, or to vindicate or exercise

any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs (as determined by the court (and not a jury) in such proceeding).

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

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

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

20.16.2 A breach of the foregoing warranty by Wireless Provider shall be deemed a material breach of the License Agreement and any issued Encroachment Permit that is subject to penalties up to and including termination of this License Agreement and any issued Encroachment Permits.

20.16.3 Town retains the legal right to inspect the papers of any employee of Wireless Provider or any subcontractor who works on a Use Area pursuant to License Agreement and any Encroachment Permit to ensure that they or the subcontractor is complying with the warranty given above.

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

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